



भारत का राजपत्र The Gazette of India

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सं. 8] नई दिल्ली, फरवरी 16—फरवरी 22, 2014, शनिवार/माघ 27—फाल्गुन 3, 1935
No. 8] NEW DELHI, FEBRUARY 16—FEBRUARY 22, 2014, SATURDAY/MAGHA 27—PHALGUNA 3, 1935

भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय

(कार्मिक और प्रशिक्षण विभाग)

नई दिल्ली, 3 दिसम्बर, 2013

कांआ 618.—केन्द्र सरकार एतद्वारा दंड प्रक्रिया संहिता, 1973 (1974 का अधिनियम सं० 2) की धारा 24 की उप-धारा (8) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए भारत के उच्चतम न्यायालय, नई दिल्ली में नवेन्द्र कुमार बनाम भारत संघ तथा अन्यो से सम्बद्ध मामले में (एसएलसी सं. 34834/2013) तथा अपीलों/पुनरीक्षणों या इससे सम्बद्ध एवं इसी संव्यवहार में अन्य मामलों में उपस्थित होने के लिए श्री के० परासरन, अधिवक्ता को विशेष लोक अभियोजक के रूप में नियुक्त करती है।

[सं० 225/58/2013-एवीडी-II]

राजीव जैन, अवर सचिव

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES
AND PENSIONS

(Department of Personnel and Training)

New Delhi, the 3rd December, 2013

S.O. 618.—In exercise of the powers conferred by sub-section (8) of section 24 of the Code of Criminal Procedure, 1973 (Act No. 2 of 1974), the Central Government

hereby appoints Shri K. Parasaran, Advocate as Special Public Prosecutor for appearing in the matter related to Navendra Kumar Vs. UOI and Others (SLP No. 34834/2013) in the Supreme Court of India, New Delhi and appeals/ revisions or other matters connected therewith and incidental thereto.

[No. 225/58/2013-AVD-II]

RAJIV JAIN, Under Secy.

नई दिल्ली, 4 फरवरी, 2014

कांआ 619.—केन्द्रीय सरकार एतद्वारा दंड प्रक्रिया संहिता, 1973 (1974 का अधिनियम सं० 2) की धारा 24 की उप-धारा (8) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए दिल्ली विशेष पुलिस स्थापना (के०अ० ब्यूरो) द्वारा संस्थापित मामला सं० आरसी-1 (एस)/2009 तथा आरसी-2 (एस)/2009/सीबीआई, एससीबी, चेन्नई (पुलिस और मद्रास उच्च न्यायालय के अधिवक्ताओं के बीच हिंसा से संबंधित) का विचारण मद्रास उच्च न्यायालय में करने तथा अपीलों/पुनरीक्षणों या इससे सम्बद्ध अन्य मामलों और इसी संव्यवहार में संचालन करने हेतु श्री एम० रविन्द्रन, वरिष्ठ अधिवक्ता को विशेष लोक अभियोजक के रूप में नियुक्त करती है।

[फा० सं० 225/55/2013-एवीडी-II]

राजीव जैन, अवर सचिव

New Delhi, the 4th February, 2014

(वित्तीय सेवाएं विभाग)

नई दिल्ली, 7 फरवरी, 2014

S.O. 619.—In exercise of the powers conferred by sub-section (8) of section 24 of the Code of Criminal Procedure, 1973 (Act No. 2 of 1974), the Central Government hereby appoints Shri M. Ravindran, Sr. Advocate as Special Public Prosecutor for conducting trial in case No. RC 1(S)/2009 and RC 2(S)/2009/CBI, SCB, Chennai (relating to violence between Police and Advocates of Madras High Court) instituted by the Delhi Special Police Establishment (CBI) in the Madras High Court and appeals/revisions or other matters connected therewith and incidental thereto.

[F.No. 225/55/2013-AVD-II]
RAJIV JAIN, Under Secy.

वित्त मंत्रालय

(राजस्व विभाग)

आदेश

नई दिल्ली, 10 फरवरी, 2014

स्टाम्प

कांआ 620.—भारतीय स्टाम्प अधिनियम, 1899 (1899 का 2) की धारा 9 की उप-धारा (1) के खंड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्र सरकार एतद्वारा 25.50 लाख रुपये (पच्चीस लाख और पचास हजार रुपये केवल) का शुल्क माफ करती है जिसके साथ जल और स्वच्छता पूलड फंड (डब्ल्यूएसपीएफ), म्युनिसिपल प्रशासन और जल आपूर्ति विभाग, तमिलनाडु सरकार द्वारा जारी किए गए 51.00 करोड़ रुपये (इक्कावन करोड़ रुपये केवल) राशि के 8.71% असुरक्षित विमोच्य अपरिवर्तनीय कर योग्य पूलड बंध पत्र (बॉड) के रूप में वर्णित बंध पत्र (बॉड) उक्त अधिनियम के तहत अन्यथा प्रभारणीय हैं।

[सं 01/2014-स्टाम्प/फां सं 33013/2/2010-एसओ (एसटी)]
विजय कुमार, अवर सचिव

MINISTRY OF FINANCE

(Department of Revenue)

ORDER

New Delhi, the 10th February, 2014

STAMPS

S.O. 620.—In exercise of the powers conferred by clause (a) of sub-section (1) of Section 9 of the Indian Stamp Act, 1899 (2 of 1899), the Central Government hereby remits the duty of Rs. 25.50 lakh (Rupees Twenty Five Lakh and Fifty Thousand only) with which the bonds described as 8.71 % Unsecured Redeemable Non-Convertible taxable pooled bonds amounting to Rs. 51.00 crore (Rupees Fifty One Crore only) issued by Water and Sanitation Pooled Fund (WSPF), Municipal Administration and Water Supply Department, Government of Tamil Nadu, are otherwise chargeable under the said Act.

[No. 01/2014-STAMPS/F.No. 33013/2/2010-SO (ST)]

VIJAY KUMAR, Under Secy.

कांआ 621.—भारतीय निर्यात-आयात बैंक अधिनियम, 1981 (1981 का 28) की धारा 6 की उप-धारा (1) के खंड (ड) के उप-खंड द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, वाणिज्य विभाग, वाणिज्य एवं उद्योग मंत्रालय के सचिव श्री राजीव खेर को अगले आदेश होने तक श्री एस०आर० राव के स्थान पर भारतीय निर्यात-आयात बैंक (एक्जिम बैंक) के निदेशक मण्डल में निदेशक के रूप में नामित करती है।

[फां सं 24/27/2002-आईएफ-1]
गुलाब सिंह, उप सचिव

(Department of Financial Services)

New Delhi, the 7th February, 2014

S.O. 621.—In pursuance of the powers conferred by Sub-Clause (i) of Clause (e) of sub-section (1) of Section 6 of the Export Import Bank of India Act, 1981 (28 of 1981), the Central Government hereby nominates Shri Rajeev Kher, Secretary, Department of Commerce, Ministry of Commerce and Industry, as Director on the Board of Directors of Export Import Bank of India (Exim Bank) vice Shri S.R. Rao until further orders.

[F.No. 24/27/2002-IF-1]
GULAB SINGH, Dy. Secy.

सांख्यिकी और कार्यक्रम कार्यान्वयन मंत्रालय

नई दिल्ली, 28 जनवरी, 2014

कांआ 622.—केन्द्र सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 (यथा संशोधित 1987) के नियम 10 के उप नियम (4) के अनुसरण में, सांख्यिकी और कार्यक्रम कार्यान्वयन मंत्रालय के अधीन क्षेत्र संकार्य प्रभाग, राष्ट्रीय प्रतिदर्श सर्वेक्षण कार्यालय के उप-क्षेत्रीय कार्यालय, कन्नूर को, जिसके 80 प्रतिशत कर्मचारियों ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, भारत के राजपत्र में अधिसूचित करती है।

[सं ई-11011/2/2006-हिंदी]
एस०एस० बधावन, संयुक्त सचिव

MINISTRY OF STATISTICS AND PROGRAMME
IMPLEMENTATION

New Delhi, the 28th January, 2014

S.O. 622.—In pursuance of sub rule (4) of Rule 10 of the Official Language (use for official purposes of the Union) Rules, 1976 (as amended-1987), the Central Government hereby notify the Sub-Regional Office, Kannur

of Field Operation Division, NSSO under the Ministry of Statistics and Programme Implementation in the Gazette of India where 80 percent of the staff has acquired the working knowledge of Hindi.

[No. E-11011/2/2006-Hindi]
S.S. BADHAWAN, Jt. Secy.

नई दिल्ली, 28 जनवरी, 2014

का०आ० 623.—केन्द्र सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 (यथा संशोधित 1987) के नियम 10 के उप-नियम (4) के अनुसरण में, सांख्यिकी और कार्यक्रम कार्यान्वयन मंत्रालय के अधीन क्षेत्र संकार्य प्रभाग, राष्ट्रीय प्रतिदर्श सर्वेक्षण कार्यालय के उप-क्षेत्रीय कार्यालय, त्रिशूर को, जिसके 80 प्रतिशत कर्मचारियों ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, भारत के राजपत्र में अधिसूचित करती है।

[सं ई-11011/2/2006-हिंदी]
एस०एस० बधावन, संयुक्त सचिव

New Delhi, the 28th January, 2014

S.O. 623.—In pursuance of sub-rule (4) of Rule 10 of the Official Language (use for official purposes of the Union) Rules, 1976 (as amended-1987), the Central Government hereby notify the Sub-Regional Office, Thrissur of Field Operation Division, NSSO under the Ministry of Statistics and Programme Implementation in

the Gazette of India where 80 percent of the staff has acquired the working knowledge of Hindi.

[No. E-11011/2/2006-Hindi]
S.S. BADHAWAN, Jt. Secy.

नई दिल्ली, 28 जनवरी, 2014

का०आ० 624.—केन्द्र सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 (यथा संशोधित 1987) के नियम 10 के उप-नियम (4) के अनुसरण में, सांख्यिकी और कार्यक्रम कार्यान्वयन मंत्रालय के अधीन क्षेत्र संकार्य प्रभाग, राष्ट्रीय प्रतिदर्श सर्वेक्षण कार्यालय के उप-क्षेत्रीय कार्यालय, पालक्काड को, जिसके 80 प्रतिशत कर्मचारियों ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, भारत के राजपत्र में अधिसूचित करती है।

[सं ई-11011/2/2006-हिंदी]
एस०एस० बधावन, संयुक्त सचिव

New Delhi, the 28th January, 2014

S.O. 624.—In pursuance of sub-rule (4) of Rule 10 of the Official Language (use for official purposes of the Union) Rules, 1976 (as amended-1987), the Central Government hereby notify the Sub-Regional Office, Palakkad of Field Operation Division, NSSO under the Ministry of Statistics and Programme Implementation in the Gazette of India where 80 percent of the staff has acquired the working knowledge of Hindi.

[No. E-11011/2/2006-Hindi]
S.S. BADHAWAN, Jt. Secy.

उपभोक्ता मामले, खाद्य और सार्वजनिक वितरण मंत्रालय
(उपभोक्ता मामले विभाग)

(भारतीय मानक ब्यूरो)

नई दिल्ली, 31 जनवरी, 2014

का०आ० 625.—भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उप-नियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि जिन भारतीय मानकों के विवरण नीचे अनुसूची में दिए गए हैं वे स्थापित हो गये हैं।

अनुसूची

क्रम संख्या	स्थापित भारतीय मानक (कों) की संख्या वर्ष और शीर्षक	स्थापित तिथि	भारतीय मानक (कों) जो कि रद्द होने हैं, अगर हैं, की संख्या वर्ष और शीर्षक	रद्द होने की तिथि
(1)	(2)	(3)	(4)	(5)
1.	आई एस 1725 : 2013 सामान्य भवन निर्माण में प्रयुक्त स्थायीकृत मृदा की ब्लॉक—विशिष्ट (दूसरा पुनरीक्षण)	31 जनवरी, 2014	आई एस 1725 : 1982 सामान्य भवन निर्माण में प्रयुक्त स्थायीकृत मृदा की ब्लॉक के लिए विशिष्ट (पहला पुनरीक्षण)	31 जनवरी, 2014
2.	आई एस 3023 : 2013 थर्मल छिड़काव द्वारा बिल्डिंग-अप के लिए अनुशंसित रीति (पहला पुनरीक्षण)	31 जनवरी, 2014	आई एस 3023 : 1965 थर्मल छिड़काव द्वारा बिल्डिंग-अप के लिए अनुशंसित रीति	31 जनवरी, 2014

(1)	(2)	(3)	(4)	(5)
3.	आई एस 7750 : 2013 काजू गिरी—विशिष्ट (पहला पुनरीक्षण)	31 जनवरी, 2014	आई एस 7750:1975 काजू गिरी के लिए विशिष्ट	31 जनवरी, 2014
4.	आई एस 15977: 2013 संरचना इस्पात की निमग्न आर्क वेल्डिंग के लिए खुली ठोस तार इलैक्ट्रोड एवं तार फ्लक्स कंबिनेशन के वर्गीकरण एवं स्वीकार्य परीक्षण— विशिष्ट	31 जनवरी, 2014	आई एस 7280:1974 संरचनात्मक इस्पात की निमग्न आर्क वेल्डन हेतु नंगे तार वाले इलेक्ट्रोड आई एस 3613: 1974 निमग्न आर्क वेल्डन हेतु वायर फ्लक्स संयोजन के लिए स्वीकार्यत, परीक्षण (पहला पुनरीक्षण)	31 जनवरी, 2014
5.	आई एस 16056: 2013 तरल चीनी-विशिष्ट	31 जनवरी, 2014	N.A.	N.A.
6.	आई एस 16095: 2013 हैजमैट वाहन-विशिष्ट	31 जनवरी 2014	—	—
7.	आई एस 16127: 2013 कान के पीछे लगाए जाने वाले श्रवण सहायक यंत्र- डिजिटल— विशिष्ट	31 जनवरी, 2014	—	—
8.	आई एस 16128: 2013 एमपेग-4 डिजिटल केबल टीवी सेवाओं के लिए सैट टॉप बॉक्स-विशिष्ट	31 जनवरी, 2014	—	—

इस भारतीय मानक की प्रतियां भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुरशाह जफर मार्ग, नई दिल्ली-110 002, क्षेत्रीय कार्यालयों : नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई, तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, पटना, पूणे तथा तिरुवनन्तापुरम में बिक्री हेतु उपलब्ध हैं। भारतीय मानकों को <http://www.standardsbis.in> द्वारा इंटरनेट पर खरीदा जा सकता है।

दिनांक 10 अक्टूबर

[संदर्भ पब/एसटीडी-1/जीएन]

कला माधवी वारियर, निदेशक (विदेशी भाषा एवं प्रकाशन)

MINISTRY OF CONSUMER AFFAIRS, FOOD AND PUBLIC DISTRIBUTION

(Department of Consumer Affairs)

(BUREAU OF INDIAN STANDARDS)

New Delhi, the 31st January, 2014

S.O. 625.—In pursuance of Clause (b) of sub-rule (1) of Rules 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standards, particulars of which are given in the second column of Schedule hereto annexed has been established on the date indicated against it in third column. The particulars of the standards, if any, which are given in the fourth column shall also remain in force concurrently till they are cancelled on the date indicated against them in the fifth column.

SCHEDULE

Sl. No.	No. & Year of the Indian Standards Established	Date of Establishment	No. & Year of the Indian Standards to be cancelled, if any	Date of cancellation
(1)	(2)	(3)	(4)	(5)
1.	IS 1725:2013 Stabilized Soil Blocks used in General Building construction—Specification (Second revision)	31 January 2014	IS 1725:1982 Specification for soil based blocks used in general building construction (first revision)	31 January 2014
2.	IS 3023:2013 Recommended Practice for building-up by thermal spraying (First Revision)	31 January 1014	IS 3023:1965 Recommended Practice for building-up by thermal spraying.	31 January 2014
3.	IS 7750:2013 Cashew Kernels—Specification (First Revision)	31 January 2014	IS 7750:1975 Specification for cashew Kernels	31 January 2014
4.	IS 15977:2013 Classification and acceptance test for bare solid wire electrode and wire flux electrodes and wire flux combination for submerge Arc welding of structural steel.	31 January 2014	IS 7280:1974 Bare wire electrodes for submerged arc welding of structural steels IS 3613:1974 Acceptance test for wire flux combination for submerged arc welding (First Revision).	31 January 2014
5.	IS 16056:2013 Liquid Sugar—Specification	31 January 2014	N.A.	N.A.
6.	IS 16095:2013 Hazmat Vehicle—Specification	31 January 2014	—	—
7.	IS 16127:2013 Behind The Ear (BTE) Hearing Aid-Digital—Specification	31 January 2014	—	—
8.	IS 16128:2013 Set Top Box for MPEG-4 Digital Cable TV Services-Specification	31 January 2014	—	—

Copies of these standards are available for sale with the Bureau of Indian Standards, Manak Bhavan, 9, Bahadur Shah Zafar Marg, New Delhi-110002 and Regional Offices: Kolkatta, Chandigarh, Chennai, Mumbai and also Branch Offices: Ahmedabad, Bangalore, Bhopal, Bhubaneswar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Kochi.

[Ref. Pub/STD-1/G-N]

Date: 10 October.

KALA M. VARIAR, Director
(Foreign Languages & Publication)

कोयला मंत्रालय

नई दिल्ली, 17 फरवरी, 2014

का०आ० 626.—केन्द्रीय सरकार को यह प्रतीत होता है कि, इससे उपाबद्ध अनुसूची में वर्णित परिक्षेत्र की भूमि में से कोयला अभिप्राप्त किए जाने की संभावना है;

और, उक्त अनुसूची में वर्णित भूमि के अन्तर्गत आने वाले क्षेत्र के ब्यौरे रेखांक संख्या एसईसीएल/बीएसपी/जीएम (पीएलजी)/भूमि/443 तारीख 02 मई, 2013 का निरीक्षण कलेक्टर, जिला अनुपपुर (मध्यप्रदेश) के कार्यालय में या कोयला नियंत्रक, 1, काउंसिल हाऊस स्ट्रीट, कोलकाता-700001 के कार्यालय में या साऊथ ईस्टर्न कोलफील्ड्स लिमिटेड (राजस्व अनुभाग), सीपत रोड, बिलासपुर-495006 (छत्तीसगढ़) के कार्यालय में किया जा सकता है।

अतः अब, केन्द्रीय सरकार, कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 4 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, पूर्वोक्त अनुसूची में वर्णित भूमि से कोयले का पूर्वोक्षण करने के अपने आशय की सूचना देती है।

अनुसूची में वर्णित भूमि में हितबद्ध कोई व्यक्ति इस अधिसूचना के प्रकाशन की तारीख से नब्बे दिन के भीतर, भारसाधक अधिकारी या विभागाध्यक्ष (राजस्व), साऊथ ईस्टर्न कोलफील्ड्स लिमिटेड, सीपत रोड, बिलासपुर-495006 (छत्तीसगढ़) को,

(i) अधिनियम की धारा 4 की उप-धारा (3) के अधीन की गई किसी कार्यवाही से हुई या सम्भाव्य होने वाली किसी क्षति के लिए उक्त अधिनियम की धारा 6 के अधीन प्रतिकर का दावा कर सकेगा; या

(ii) उक्त अधिनियम की धारा 13 की उपधारा (1) के अधीन पूर्वोक्षण अनुज्ञप्तियों के प्रभावहीन होने या उक्त अधिनियम की धारा 13 की उप-धारा (4) के अधीन खनन पट्टे के प्रभावहीन होने के लिये प्रतिकर का दावा कर सकेगा और उसे उक्त अधिनियम की धारा 13 की उपधारा (1) के खंड (i) से खंड (iv) में विनिर्दिष्ट मदों की बाबत उपगत व्यय को उपदर्शित करने के लिये पूर्वोक्त भूमि से संबंधित सभी मानचित्रों, चार्टों और अन्य दस्तावेजों को परिदत्त करेगा।

अनुसूची

मनपुरा ब्लाक, सोहागपुर क्षेत्र,

जिला-अनुपपुर, मध्यप्रदेश

(रेखांक संख्यांक एसईसीएल/बीएसपी/जीएम(पीएलजी)/भूमि/443, तारीख 2 मई, 2013)

क्रम सं०	ग्राम का नाम	पटवारी हल्का संख्यांक	बंदोबस्त संख्यांक	तहसील	जिला	क्षेत्र हेक्टर में	टिप्पणियां
1.	केल्हौरी	3	109	अनुपपुर	अनुपपुर	935.492	संपूर्ण
2.	देवरी	4	449	अनुपपुर	अनुपपुर	500.000	भाग
3.	सकोली	5	952	अनुपपुर	अनुपपुर	52.000	भाग
4.	चचाई आबाद	12	275	अनुपपुर	अनुपपुर	100.000	भाग
5.	भानपुर	28	848	अनुपपुर	अनुपपुर	15.000	भाग
6.	पोड़ी	28	313	अनुपपुर	अनुपपुर	450.000	भाग
7.	बकेली	29	167	अनुपपुर	अनुपपुर	500.000	भाग
8.	खांडा	30.	167	अनुपपुर	अनुपपुर	60.000	भाग

कुल : 2612.492 हेक्टर (लगभग) या 6455.59 एकड़ (लगभग)

सीमा वर्णन:

क-ख रेखा बिन्दु 'क' से आरंभ होती है और ग्राम केल्हारी, बकेली के उत्तरी सीमा के साथ, ग्राम बकेली, पोड़ी के उत्तरी भाग से, और ग्राम खांडा के मध्य भाग से गुजरती है और बिन्दु 'ख' पर मिलती है।

ख-ग रेखा बिन्दु 'ख' से आरंभ होती है और ग्राम खांडा के पश्चिमी भाग से, ग्राम भानपुर के उत्तरी भाग से गुजरती है और बिन्दु 'ग' पर मिलती है।

दोमिनिक डंगडंग, अवर सचिव

[illegible]

Boundary description:

- A-B Line starts from point 'A' and passes along northern boundary of village Kelhauri, Bakeli, through northern part of village Bakeli, Podi and middle part of village Khanda and meets at point 'B'.
- B-C Line starts from point 'B' and passes through western part of village Khanda, northern part of village Bhanpur and meets at point 'C'.
- C-D Line starts from point 'C' and passes through northern part of village Bhanpur, southern part of village Podi, middle part of village Chachai Abad, northern part of village Sakola and meets at point 'D'.
- D-A Line starts from point 'D' and passes through middle part of village Deori, along partly western boundary village of Deori, western boundary of village Kelhauri and meets at starting point 'A'.

[F.No. 43015/06/2013-PRIW-I]
DOMINIC DUNG DUNG, Under Secy.

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 31 जनवरी, 2014

का०आ० 627.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार जवाहर नवोदय विद्यालय के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय जबलपुर के पंचाट (संदर्भ संख्या 30/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 31/01/2014 को प्राप्त हुआ था।

[सं. एल-42012/137/2001-आई आर (सीएम-II)]
बी. एम. पटनायक, डेस्क अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 31st January, 2014

S.O. 627.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 30/2002 of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of Jawahar Navodaya Vidyalaya, and their workmen, received by the Central Government on 31/01/2014.

[No. L-42012/137/2001-IR(CM-II)]
B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM-LABOUR COURT,
JABALPUR

No. CGIT/LC/R/30/2002

SHRI R.B. PATLE, Presiding Officer

Shri Ramkumar Rawat,
S/o Shri Radhacharan Rawat,
Near Nagapalika,
Bungalow No. 9,
Navgaon, Chhattarpur (MP)

...Workman

Versus

The Principal,
Jawahar Navodaya Vidyalaya,
Navgaon,
Chhattarpur (MP)

...Management

AWARD

(Passed on this 3rd day of January 2014)

1. As per letter dated 28-1-2002 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-42012/137/2001-IR(CM-II). The dispute under reference relates to:

"Whether the action of the management, Principal Jawahar Navodaya Vidyalaya, Navgaon, Chhattarpur in not regularising he services of Shri Ram Kumar Rawat inspite of taking the work of Mess Helper from 1-1-91 to 7-4-2000 and terminating the services of workman from 8-4-2000 is justified? If not, to what relief the workman is entitled for?"

2. After receiving reference, notices were issued to the parties. Ist Party workman filed Statement of Claim at Page 3/1 to 3/2. The case of Ist Party workman is that he was employed as Mess Helper in Jawahar Navodaya Vidyalaya Navgaon, Distt Chhattarpur from 1-1-1991. That he continued to work on said post till termination of his services i.e. 8-4-2000. He further submits that he had completed 9 years continuous service, he was drawing

salary Rs.700 per month. On 8-4-2000, his submissions were terminated without notice without any reason. No written order was issued to him for termination of his services. That Principal only told that his services were no longer required as other person will be employed in his lace. That he was not paid retrenchment compensation, he was not paid one months' salary in lieu of notice. The workman submits that termination of his services is in violation of Section 25-F of I.D. Act. That he had completed 240 days continuous service during all calendar years. On such ground, he prays for reinstatement with back wages.

3. IInd party filed Written Statement opposing the relief prayed by workman. Preliminary objection is submitted that IInd party is discharging sovereign functions of imparting school education. That it is not an industry covered under I.D Act. That all the cases relating to service matters of Navodaya Vidyalaya were initially heard by various Courts are being heard and decided by Central Administrative Tribunal. That Navodaya Vidyalaya Samiti has been notified as Society/ statutory organizations *w.e.f.* 1-1-99. The notification is issued on 17-12-98 under Section 29(2) of the Act.

4. IInd party further submits that workman was appointed purely on part time basis on staff gap arrangement pending regular appointments on post of Mess Helper. He is not covered as workman. The appointment in Navodaya Vidyalaya Samiti are covered by Central Service Rules as adopted by Society. The workman is not entitled for regularisation. There is no scheme of regularisation of part time employees. IInd party is not covered as Industry under I.D. Act. It is denied that workman completed 240 days in any calendar year. Workman is not entitled to retrenchment compensation. On such ground, IInd party prays for rejection of claim.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

(i) Whether the action of the management, Principal Jawahar Navodaya Vidyalaya, Navgaon, Chhattarpur in not regularizing he services of Shri Ram Kumar Rawat inspite of taking the work of Mess Helper from 1-1-91 to 7-4-2000 and terminating the services of workman from 8-4-2000 is justified?

(ii) If not, what relief Workman is not entitled to the workman is entitled to?" relief prayed by him.

REASONS

6. Workman is challenging termination of his services for violation of Section 25-F of I.D. Act. He has pleaded that he has completed 240 days continuous service during each calendar year, his services were terminated without notice, he was not paid retrenchment compensation. He was continuously working for more than 240 days during each of the year. IInd party denied all material contentions of workman.

7. Workman failed to adduce evidence in support of his claim. The workman was proceeded *ex parte* on 22-11-2012. Management also failed to adduce any evidence. The evidence of management is closed on 1-1-2014. Thus both the parties failed to participate in reference proceeding. Both parties are proceeded without evidence. Workman has failed to substantiate his claim therefore I record my finding in Point No. 1 in Affirmative.

8. In the result, award is passed as under:—

(1) Action of the management in terminating services of workman is proper.

(2) Workman is not entitled to relief prayed by him.

R.B. PATLE, Presiding Officer

नई दिल्ली, 31 जनवरी, 2014

का०आ० 628.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस्०ई०सी०एल्० के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 99/1998) को प्रकाशित करती है, जो केन्द्रीय सरकार को 31/01/2014 को प्राप्त हुआ था।

[सं० एल-22012/124/1997-आई आर (सीएम-II)]

बी० एम० पटनायक, डेस्क अधिकारी

New Delhi, the 31st January, 2014

S.O. 628.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 30/2002) of the Cent. Govt. Indus.Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of SECL, and their workmen, received by the Central Government on 31/01/2014.

[No. L-22012/124/1997-IR(CM-II)]

B.M. PATNAIK, Desk Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM-LABOUR COURT,
JABALPUR****No. CGIT/LC/R/99/98****PRESIDING OFFICER: SHRIR.B. PATLE**

Working President,
Rashtriya Colliery Workers Federation (INTUC),
Po Sough Jhagrakhand Colliery,
Distt Surguja (MP) ...Workman/Union

Versus

Chairman-cum-Managing Director,
SECL, Seepat Road,
Bilaspur (MP) ...Management

AWARD

Passed on this 26th day of November, 2013

1. As per letter dated 9-6-98 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of ID Act, 1947 as per Notification No.L-22012/124/97/IR(CM-II). The dispute under reference relates to:

"Whether the action of the Chairman-cum-Managing Director, South Eastern Coalfields Ltd., Seepat Road, Bilaspur in not allowing travelling allowances to employees on their retirement, proceeding to their hometowns or the place where they intend to settle, in contravention of Rule 14 of CIL TA Rules is legal and justified? If not, to what relief the employees are entitled?"

2. After receiving reference, notices were issued to the parties. The Union submitted Statement of Claim at Page 3/1 to 3/7. The case of 1st Party Union is that strike notice dated 26-1-97 has placed demand before the management under Rule 14 of the Coal India Travelling Allowance Rules 1983. The employee of South Eastern Coalfields Limited on his retirement is entitled to fare of the class to which his pay entitles him as per Rule 9 for himself and family members proceeding to his hometown or to place where he intends to settle. That it was also submitted that the employees entitled to reimbursement of expenditure incurred by him on transporting his personal household effects as referred in Rule 13. Rule 17 provides for grant of TA to family members of an employee in the event on his death during service. That surprisingly the management refused to give those benefits to non-executive employees only. The benefit for Rule 14, 17 are extended only to

executive cadres against the rules. That refusing to give benefits to the non-executive cadre is illegal and amounts to discrimination. After failure of conciliation proceedings, the reference has been made to the Tribunal. Union claims to be registered and recognized Union. The Union has large membership in colliery of SECL. That the wage structure and other conditions of service including fringe benefits of employees of coal industry are governed under the recommendations of the Central Wage Board. The employees working in mines/collieries owned by Coal India Limited are also governed by the Coal India Travelling Allowance Rules, 1983. The rules are reproduced in para-3. The employee has been defined under rule 4(c)(d), Rule 17(b) entitles to get actual expenses incurred on transportation of the family members. Rule 17 has been reproduced in para-4 of the Statement of Claim.

3. As per the Union, the employees and their family members were entitled to TA, actual fare of the claim to which his pay entitles under Rule 14 & 17 but management of SECL surprisingly refused to give such benefit to non-executive cadre from 1990 under pretext of amendment in TA Rules. The Union submits that non-executive cadre employees are also governed by same TA Rules. They are entitled to get benefits of Rule 14 & 17 retired employees are entitled to actual fare.

4. Management filed Written Statement at Page 2/1 to 2/3 and exhaustive Written Statement is filed on 11-9-08, Objection is raised that the reference is not tenable under Section 10 of the I.D. Act. No Industrial Dispute existed at time of making reference. Service conditions of employees in Coal Industry are covered on recommendations of Central Wage Board for Coal Mining Industry accepted by Government of India. In Coal industry, there are more than 4 lac employee. That the question under reference to the Tribunal involves question of national importance. As the industrial establishment situated in more than one State are likely to be interested in or effected. That employees in Coal Industry in State of Assam, Meghalaya, West Bengal, Bihar, Orissa, Madhya Pradesh, Maharashtra, Andhra Pradesh are interested on the matter, therefore the reference would have been to the National Tribunal under Section 7-A of the Act. Management further submits that the power of holding the Rule 14 of Coal India travelling Allowance Rule provide for Travelling allowance to workmen which is neither factual nor legally correct. It is highly disputed question. Central Government while exercising power under Section 10 would not have decided the question.

5. IInd party further submits that Coal India Limited was formed in 1975 as holding company. Just prior to formation of this holding company in 1975, Bharat Cooking

Coal Limited was functioning as a separate company of its own. There was Coal Mines Authority of India Limited having various divisions such as Central Division, Eastern division and Western Division. Both these companies were having their own Travelling Allowance Rules. The rule was originally framed by Bharat Cooking Coal Limited which was constituted in 1972. Subsequently in 1973, other non-cooking coal mines were also nationalized and placed under administrative control of Coal Mines Authority of India. That in 1976, Shri O. Maheepathi, the Chief of Personnel Division, CIL *vide* letter dated 9-4-76 addressed to Vice Chairman/Managing Director, Bharat Cooking Coal Limited clarified that the word employee covers only the executives and non-executives were excluded so far as application of Rule 9.6 of BCCL TA Rule and Rule 15 of CMAOIL TA Rules. That Shri A.V. Brahma, the then Chief of Personnel Division of Coal India Limited *vide* letter dated 27-6-88 addressed to all CMDs of the subsidiary company had given clarified regarding the application of Rule 14 which provides for grant of Travelling Allowance to the employees proceeding for their final settlement. That General Manager, (Personnel), CIL in 1992 *vide* letter dated 2-1-92 again clarified that provisions of Rule 17 would cover executives and non-executives both. Rule 14 is restricted only to the executives. That Rule 14 is not made applicable to all subsidiary companies of CIL. The provision of Rule 14 empowers authority to restrict the application of Travelling Allowance Rules to include or exclude any such employees.

6. IInd party management denied allegations of discrimination that Rule 14 of CIL TA Rules provides that competent authority has no right to interpret regarding the application of Rule 14, rather they have the authority to impose restrictions. IInd party has submitted that the employees employed in Coal Industry more than 5 Lac have understood that they are not entitled to TA on their retirement and their service conditions are governed by NCWA-I to VII. Any of the NCWA do not provide for such TA. That NCWA has settled under I.D. Act are binding of management and workman under Section 18 of the Act. That since 1-5-73, no such demand was made by the workmen. The demand has to be raised in the Joint Bipartite Committee for Coal Industry. Process of completion of NCWA is remedy if the workman take up the demand before Committee. On such grounds, the IInd party submits that there is no justification for giving TA to the employees retiring with persons are not getting such allowances. Such allowance are allowed to one Industry. It will create industrial unrest. The Union has no peace. Award be passed in favour of the management.

7. IInd party has denied all material contentions of the Union. That CIL TA Rule 14 also applied to non-

executive employees. It is emphasized that claim made by Union has no status. The Clause of TA Rules has to be implemented with circulars issued from time to time, the circular become part of it.

8. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

(i) Whether the action of the Chairman-cum-Managing Director, South Eastern Coalfields Ltd., Seepat Road, Bilaspur in not allowing travelling allowances to employees on their retirement, proceeding to their home-towns or the place where they intend to settle, in contravention of Rule 14 of CIL TA Rules is legal?	In Affirmative
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(ii) If not, what relief the workman is entitled to?"	Demand of Union is rejected.
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REASONS

9. Union has raised present dispute claiming that the non-executive employees working in SECL are entitled to TA Rules after their retirement for place of their settlement of shifting. IInd party denied claim of the Union on multiple ground raised in the Written Statement. Though the Union has raised the dispute filing Statement of Claim, it did not adduce evidence to substantiate its demand. The reference was proceeded ex parte against Union on 25-6-2012.

10. However Union has filed documents Exhibit W-1, W-2, W-3 admitted by the IInd party. Document Exhibit W-1 is notice of strike for demand. Exhibit W-2 is copy of order of reference. Exhibit W-3 is copy of TA Rules of CIL. Rule 14 provides subject to such restrictions as may be imposed by Competent Authority, an employee on his retirement or on cessation of employment in cases of re-employed officer may be granted actual fare of the class to which his pay entitles him (Rule 9) for himself and his family proceeding to his hometown or the place where he intends to settle. He will also be reimbursed the actual expenditure incurred on transporting his personal effects.

11. Though contentions are raised in Statement of claim and Written Statement filed by the management with respect to Rule 17. The reference is restricted to the denial of benefit of Rule 14 of CIL TA Rules. Therefore it is not

appropriate to discuss the benefit of Rule 17 of CIL TA Rules. The documents Exhibit W-4 is copy of amendment of CIL Rules dated 4-12-90 consequent on implementation of NCWA IV, entitlement of non-executive cadre employees under Rule 9, 11.3.1 and 11.4 has been revised and amended. However for the executive cadre employees the entitlement for travel in Ist/2nd class air conditioned two tier sleeper coach will be the pay of Rs. 2030 and above. Exhibit W-5 is copy of the amendment of TA Rules dated 10-5-92 with regard to the transfer of employee.

12. Management filed affidavit of witness Shri P.K. Agrawal, Affidavit is devoted extensively that the reference to this Tribunal is not tenable. The reference should have been made to the National Tribunal. That NCWA are settled under I.D. Act are binding on management and the workman as per Section 18 of the Act and they have over riding effect on all of them including the TA. That no such demand was raised by the workmen. The clarifications were issued that Rule 14 does not apply to non-executives. The copy of judgment by CGIT Bombay is also produced on record. I have carefully gone through the judgment. That under CIL TA Rule 14, the power of restriction is given to Competent Authority. The Competent Authority has repeatedly clarified that Rule 14 does not apply to non-executive employees. In present reference, Union has failed to adduce evidence. The witness of the management was not cross-examined. The management has produced copies of letters issued by Personnel Manager Shri A.V. Brahma, General Manager R.G. Singh, That CIL TA Rule 14 does not apply to non-executive employees. As the evidence remained unchallenged and Union failed to adduce evidence, I do not find substance in the demand. Rule 14 contemplates powers of restrictions to the competent authority. Said power has been exercised and the benefit of TA Rules is restricted to executive cadres only. It cannot be discriminatory or illegal. The services of employees working in Coal Mines are governed by NCWA. The demand claiming benefit of Rule 14 was never raised before the Competent Authority. Therefore it appears that the employees working in Coal Mines were satisfied and there were no demand. Secondly the demand was not raised before appropriate forum. For above reasons, I record my finding in Affirmative.

13. In the result, award is passed as under:—

(1) Action of IInd party Chairman-cum-Managing Director, South Eastern Coalfields Ltd., Seepat Road, Bilaspur is not allowing travelling allowances to employees on their retirement, proceeding to their hometowns or the

place where they intend to settle, in contravention of Rule 14 of CIL TA Rules is proper.

(2) Demand of Union is not accepted.

R.B. PATLE, Presiding Officer

नई दिल्ली, 3 फरवरी, 2014

का०आ० 629.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर रेलवे प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 288/97) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03/02/2014 को प्राप्त हुआ था।

[सं. एल-41012/113/94-आई आर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 3rd February, 2014

S.O. 629.—In pursuance of Section 17 of the Industrial Disputes Act, 1947(14 of 1947), the Central Government hereby publishes the Award (Ref. No. 288/97) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of South Eastern Railway and their workmen, received by the Central Government on 03/02/2014.

[No. L-41012/113/94-IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/288/97

PRESIDING OFFICER: SHRI R.B. PATLE

The Secretary,
South Eastern Railway Mens Union,
Shahdol Unit,
Shahdol.

....Workman/Union

Versus

The Divisional Railway Manager,
South Eastern Railway,
Bilaspur.

....Management

AWARD

Passed on this 13th day of January, 2014

1. As per letter dated 26-9/8-10/97 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No. L-41012/113/94-IR(B-1). The dispute under reference relates to:

"Whether the action of the Divisional Railway Manager, South Eastern Railway, Bilaspur in suspending Shri B.S. Naidu Painter Gr-III under Signal Inspector, S.E.R. Shahdol from 19-2-98 to 16-4-88, removing him from Railway Service 30-11-89 to 17-4-90 and after reinstatement reducing his pay from Rs.1400 to 1350 in Pay Scale of Rs. 950 to 1500 with postponing further increments is legal and justified? To what relief the workman Shri B.S. Naidu is entitled?"

2. After receiving reference notices were issued to both the parties. 1st Party workman submitted Statement of claim at Page 9 to 13. The case of Ist Party workman is that he was working as Painter Grade-III under Sr. Section Engineer (Signal), Shahdol. He was put under suspension on report of the fact finding Committee of 3 officers. That Committee had no powers to decide upon suspension of the workman. Such power is not given to the Committee under Railway Servants Disciplinary and Appeal Rules, 1968. The findings of the Committee is illegal and unjustified. That memo of suspension dated 20-2-88 was issued by the ASTE, Shahdol. It was not his decision rather it was dictate of the committee. He had no authority to suspend him. That his suspension was with prejudice on part of the Fact finding committee. The Committee had not started enquiry by the time suspension was ordered. There was no material before Committee and no decision to initiate disciplinary proceeding against him. That his suspension is illegal,

3. That chargesheet was issued to him on 26-5-88 by S. Divnl. Signal and Telecom Engineer, SF Railway, Bilaspur. He was alleged on committing misbehaviour with Area Suptd. Shahdol on 19-2-88, That enquiry was ordered to be conducted by DST Microwave, Bilaspur. He was not supplied documents as per his request. He was not given opportunity for his defence. Such enquiry is vitiated. Enquiry was conducted exparte. As per Rule 9(12) of Railway Servants Disciplinary Appeal Rules, 1968 if Railway servant fails to appear within specified period, the Enquiring Authority is required to direct Presenting Officer for producing evidence. The documents were not mentioned in the chargesheet, list was not given. It is reiterated that the enquiry is vitiated.

4. That there is no evidence to support charge against him. Enquiry Officer illegally held him guilty. That defective enquiry is no enquiry. Punishment of removal from service was imposed by Disciplinary Authority is unjustified. That

punishment was challenged by him filing appeal before Addnl. Divisional Railway Manager. The punishment of removal was modified and the same was reduced to next lower grade for a period of 3 years., 1st Party workman submits that revision was filed challenging order in appeal. However revision was decided by Railway Divisional Manager. He was not competent to decide his revision. That his pay was reduced from Rs.1400 to 1350 with cumulative effect is illegal, reduction of his pay is unjustified. On such ground, workman is praying to quash order of his suspension dated 20-2-88, order of removal dated 29-11-90, order of Appellate Authority dated 6-7-90.

5. IInd Party filed Written Statement at Page 22 to 25. IInd Party denies contention of workman that his suspension is illegal. It is denied that the suspension of workman was decided by fact finding committee without authority under Railway Servants Disciplinary and Appeal Rules 1968. According to IInd party, suspension order was issued under Rule 5(1) of the Rules. As workman had violated instructions issued by higher Railway Authority. While RPF were clearing the unauthorized pan venders from Railway Platform Shahdol. The contentions of workman about illegality of suspension order are denied. The grounds are baseless. The workman was supplied documents as per request. The enquiry was conducted properly. Every representation of workman was officer and he was advised to attend enquiry proceeding with the assurance that the additional documents will be supplied subject to relevancy. That workman failed to appear in the Enquiry Proceeding despite six opportunities given to him. The enquiry was conducted exparte. Punishment of removal was imposed against him considering gravity of misconduct. In appeal preferred by 1st Party workman, punishment was modified. The revision was dismissed, IInd Party submits that contentions of workman are baseless. The same have been denied. IInd Party prayed for rejected of claim of workman.

6. Workman filed rejoinder at page 11/4 to 11/12 reiterating his contentions in Statement of claim that the enquiry was not properly conducted. Enquiry is vitiated.

7. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

"(i) Whether the enquiry conducted against workman is legal and proper? In Affirmative

(ii) Whether the action of the Divisional Railway Manager, South Eastern Railway, Bilaspur in suspending Shri B.S.Naidu Painter Gr-III under Signal Inspector, S.E.R. Shahdol from 19-2-98 to 16-4-88, removing him from Railway In Affirmative

Service 30-11-89 to 17-4-90
and after reinstatement
reducing his pay from
Rs.1400 to 1350 in Pay
Scale of Rs. 950 to 1500
with postponing further
increments is legal and
justified?

(iii) If not, what relief the
workman is entitled to?" Workman is not entitled
to relief claimed by him.

REASONS

8. From terms of reference itself, it is clear that the order of removal from service to workman was modified by Appellate Authority. Punishment of removal was quashed. Workman was reinstated in service reducing his pay from Rs. 1400 to 1350. Though the workman has challenged legality of enquiry proceedings on different grounds that he was not supplied documents, the enquiry was conducted *ex parte*, he was not given reasonable opportunity for his defence. The workman has not adduced evidence to substantiate his contentions. Workman was proceeded *ex parte* on 7-7-2005, 21-9-2000. Workman failed to adduce evidence in support of his contentions, Management has filed affidavit of evidence of its witness Shri R.Shankaran and Shri B.S.Naidu. Both the witnesses of the management have given details of the enquiry conducted against workman. The affidavit of evidence of management's witness Shri A.K.Singh also given how the enquiry conducted the *ex parte* against workman. Workman had filed to appear in the enquiry proceedings. The documents Exhibit M-1 to M-7 are proved from evidence of management's witness. The evidence of management's witness remained unchallenged. I therefore do not find reason to disbelieve their evidence that workman failed to appear in Enquiry Proceedings and therefore the enquiry was proceeded *ex parte* against him. For above reasons, I record my finding in Point No. 1 in Affirmative.

9. Point No. 2- normally preliminary issue needs to be decided. However in present case, workman has not participated. He has not adduced evidence. He failed to participate in the matter. Under such set of fact, it would be mere formality to postpone finding on Issue No. 2. the record of enquiry is proved from evidence of management's witness Exhibit M-1 to M-7. The charge against 1st Party workman is about committing serious misconduct by not allowing Railway Servant Staff on duty on 13-9-97 at Shahdol evicting pan staffs using unparliamentary language etc. He caused complete stoppage of trains at Shahdol for more than 4 hours. Exhibit M-2 finds reference of enclosing statement of articles of chargesheet, statements

of imputations etc. The documents of enquiry proceeding further shows statements of witnesses Shri C.K. Kundu, A. Laxman Rao, booking clerk, Hari Ram Pandey, Bhagwandeem Driver, U.K. Topno were recorded. The notice of removal was issued Exhibit M-5 the charges against workman are supported by statement of their witnesses. The workman failed to participate in the Enquiry Proceedings, Enquiry was conducted *ex parte*. The findings of Enquiry Officer are supported by evidence of the management's witness sufficiently proves the charge. The punishment of removal from service of workman was modified by Appellate Authority. Workman was reinstated in service reducing his pay from Rs.1400 to 1350. It appears that workman is not interested to prosecute his claim under reference. He may be satisfied that his order of reinstatement. Considering those aspects, I record my finding in Point No. 2 in Affirmative,

10. In the result, award is passed as under:—

(1) Action of the Divisional Railway Manager, South Eastern Railway, Bilaspur in suspending Shri B.S. Naidu Painter Gr-III under Signal Inspector, S.E.R. Shahdol from 19-2-98 to 16-4-88, removing him from Railway Service 30-11-89 to 17-4-90 and after reinstatement reducing his pay from Rs.1400 to 1350 in Pay Scale of Rs. 950 to 1500 with postponing further increments is proper.

(2) Workman is not entitled to any relief prayed by him.

R. B. PATLE, Presiding Officer

नई दिल्ली, 3 फरवरी, 2014

का०आ० 630.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के (पंचात संदर्भ संख्या 46/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03/02/2014 को प्राप्त हुआ था।

[सं. एल-12012/243/2002-आई आर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 3rd February, 2014

S.O. 630.—In pursuance of Section 17 of the Industrial Disputes Act, 1947(14 of 1947). the Central Government hereby publishes the Award (Ref. No. 46/2003) of the Cent. Govt. Indus. Tnbunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of State Bank of India, and their workmen, received by the Central Government on 03/02/2014.

[No. L-12012/243/2002-IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR**

NO. CGIT/LC/R/46/2003

PRESIDING OFFICER: SHRI R.B.PATLE

Shri Babulal Dixit,
S/o Mishrilal Dixit,
189, Bhim Nagar,
Birla Mandir Road,
Bhopal (MP)

....Workman

Versus

The Asstt. General Manager,
State Bank of India,
Region-I, Zonal Office,
Hamidia Road,
Bhopal (MP)

....Management

AWARD

Passed on this 21st day of January 2014

1. As per letter dated 14-2-2003 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section 10 of I.D. Act, 1947 as per Notification No. L-12012/243/2002-IR(B-I). The dispute under reference relates to:—

" Whether the action of the management of Asstt. General Manager, State Bank of India, Region-I, Bhopal in terminating the services of Shri Babulal Dixit S/o Mishrilal Dixit w.e.f. 23-4-97 and not regularizing him is justified? If not, what relief the workman is entitled for?"

2. After receiving reference, notices were issued to the Parties, Case of 1st Party workman is that by oral order dated 23-4-97 by Shri Hemant Kumar Ojha, Branch Manager, workman was prevented to attend his service from 24-4-97. No dismissal or order of termination or retrenchment were given. Workman was illegally prevented from attending service. It is further submitted that workman was engaged as messenger in Jehangirabad Branch, Bhopal. He worked for 244 days from November 81 to 82, more than 90 days in November 82 to March 83, 193 days during April 83 to Jan.84 & 1370 at Vindyanchal Branch, Bhopal from 20-7-93 to 23-4-97. He was orally discontinued from service. That IInd Party had admitted in its submissions dated 8-2-02 that workman had worked for 244 days during November 81 to November 82, 193 days during April 83 to January 84, 142 days from 17-7-93 to 31-12-93 and 840 days from 1-4-94 to 29-4-97. Workman further submits that he had completed 240 days continuous service in each calendar year. He is

entitled for absorption as permanent employee. Instead of regularizing his services, he was terminated orally.

3. Workman submits that Respondent Bank had invited applications for absorption of temporary employees in Bank. He had submitted application on 18-5-91. His name was in Waiting List, he was allowed to resume at Vindyanchal branch as protected employee. He was accordingly working in said branch from 23-7-93 to 13-4-96. He further submits that Bank is denying permanent appointment on the ground that his date of birth was 1-12-65. After attaining age of 18 years, he worked for only 38 days. He is not entitled for absorption as permanent employee. Other temporary persons who had worked even for 30 days were absorbed but the workman after working for more than 30 days, he was denied absorption. Rather his services are terminated illegally. On such grounds, workman prays that respondent be directed to appointment him with full back wages.

4. IInd Party filed Written Statement at Page 10/1 to 10/11. IInd party submits that workman was engaged purely on daily wage basis as Messenger, working days are shown 49 days during November 91 to December 81, 195 days during January 82 to November 82 & 193 days during April 83 to Jan. 84 at Jehangirabad branch. At Vindhyanchal branch, working days are shown as 142 days during July 93 to Dec. 93 & 840 days from April 94 to Dec. 97. The workman was engaged on contract basis on exigency of work and as soon as the work is over, the employee was not required to report for work. The dispute was raised by workman. Working days are reiterated by the IInd Party. However it is pleaded that workman was not continuously working for 240 days in any calendar year as provided under Section 25-F of ID. Act. The engagement of workman was contractual depending on exigency of work. His termination is covered under Section 2(oo) (bb) of I.D. Act.

5. IInd Party advertised in newspapers for furnishing application on the prescribed formats for such a daily rated employees/casual workers who have worked for the stipulated period as provided under the settlement during the period w.e.f. 31-7-88 to 14-8-91. Workman was also considered. However he had worked only for 38 days after attaining majority during the relevant period. Therefore he cannot be empanelled for permanent employment in the vacancy available. As per the settlement, the panel was required to be kept alive till March, 1997 so that opportunity for permanent employment could be given to the permanent candidates. The action of the management is legal. It is further pleaded that the candidates were interviewed and panel of selected candidates was prepared by Bank in accordance with settlement of candidates working from 31-7-88 to 14-8-91. That after attaining majority, workman has worked only for 38 days. Therefore he could not be given permanent employment. It is reiterated that the

workman has not completed 240 days continuous service. On such ground, IInd Party prays for rejection of claim of workman.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

(i) Whether the action of the management of Asstt. General Manager, State Bank of India, Region-I, Bhopal in terminating the services of Shri Babulal Dixit S/o Mishrilal Dixit w.e.f. 23-4-97 and not regularizing him is justified?	In Negative
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(ii) If not, what relief the workman is entitled to?	As per final order.
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REASONS

7. 1st Party is challenging oral discontinuation from service. That he has filed affidavit of his evidence. He has stated that he had worked 90 days as waterman in the year 1982, 193 days from April 83 to January 84, Employer conducted his interview for permanent absorption. He had applied for the post. He was called as per letter dated 28-10-92. On 12-2-97, he was informed by the employer that he was interviewed earlier. He did not appear for interview. That his name was included in the waiting list, he was directed to join at Vindhyanchal branch on his completing majority. He was paid salary and DA through Banker cheque. He was continued till 23-4-97. Suddenly he was discontinued from next date. In his cross-examination, workman says that he denied suggestion of management about working days—49 days during November 81 to December 81, 195 days during January 82 to November 82 and 193 days during April 83 to January 84 at Jehangirabad branch, Bhopal. It is denied that he worked for 142 days during July 93 to December 93 and 840 days during April 94 to December 97 at Vindhyanchal branch, Bhopal. Workman has not produced any evidence about his working days but as per admission in Written Statement filed by management and suggestion in cross-examination of workman, it is clear that workman was working for 840 days from April 94 to Dec. 97. The said period is decided when working days comes more than 240 days during each of the calendar year. Workman in his cross-examination claims ignorance about permanent appointment made in the Bank as per settlement. He has stated that he was called for interview for permanent post. He claims ignorance whether he was not given permanent employment as his working days were 38 days after attaining majority. Workman in his statement of claim has pleaded that one Anil Kumar Narvria working for 30 days was given permanent employment.

However any evidence is not produced. Management filed affidavit of witness Shri Kulkarni. He has given working days of 1st Party workman in para-2 of his affidavit during the period from July 93 to Dec. 93, he worked for 142 days and from 1-4-94 to 20-4-97, he worked for 840 days. Though in further paras, he denied workman working for 240 days during any of the calendar year. The calculation of working days during April 94 to April 94 comes more than 240 days during each calendar year. In his cross-examination, management's witness says that only after looking report, he could say whether the workman had worked for more than 240 days in each calendar year. With respect to Shri Anil Kumar Narvria, witness claims ignorance. He also claims ignorance whether name of workman was recommended by the Selection Committee but the workman was not given appointment for permanent post.

8. The documents Exhibit W-1 shows working days of workman as 244 days from November 81 to November 82. Exhibit W-2 shows 90 working days since 1982. Exhibit W-3 shows payment of wages for 193 days from April 83 to Jan. 84. Exhibit W-4 is letter given by Asstt. General Manager. That workman had worked for only 38 days during 1-7-75 to 31-12-93. He could not be given appointment on permanent post. Copy of Supreme Court Judgment is produced at Exhibit W-5. The claim of workman cannot be decided on such judgment. Copies of settlements are produced at Exhibit W-7. The settlement Exhibit M-1 deals with the temporary employees in subordinate cadre will be given chance for being considered for permanent appointment in the Bank's service against vacancies likely to arise in 1987 to 1991. (i) Category A employees those who have completed 240 days temporary service in 12 months or less after 1-7-75, (ii) Category B- those who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months after 1-7-75. The documents produced Exhibit W-1 shows 244 working days of workman during November 81 to November 82. Workman in his cross-examination has stated that his date of birth is 1-12-1965. Thus he would complete 18 years of age on 30-11-1983. The working days of workman were not considered till the date of attaining majority. The management found that the workman had worked only for 38 days after attaining majority.

9. From statement of claim of management, working days of workman is 193 days during April 83 to Jan. 84 and 142 days during July 93 to Dec. 93 & 840 days from April 94 to Dec. 97. The working days clearly shows that the workman is entitled to permanent post and he had worked more than 30 days after 1975. The denial of permanent post to the workman cannot be said legal. Besides above, the workman had completed 240 days regular service during 1994 to 1997. The workman was not given notice for termination of service. His services were orally terminated. He was not paid retrenchment compensation.

10. Learned counsel for IInd party Mr. Tripathi on the point relates on ratio held in plenty of cases.

"In case of Bharat Sanchar Nigam Limited and others *versus* Abhishek Shukla and another reported in 2009(5) supreme Court Cases 368, Their Lordship held validity of selection list is ordinarily one year. In the case where respondents had made representations for appointment within one year of such approval of select list, the said requirement stood fulfilled."

The facts of present case are not comparable. The Bipartite settlement provided for absorption of temporary employees working till initially 1993 and onwards 97. The ratio held in the case cannot be applied beneficially in the present case at hand.

"In case of State of MP and others *versus* Raghuveer Singh Yadav and others reported in 1994(6) Supreme Court Cases 151. Their Lordship dealing with appointments, selection, fresh selection after changing qualifications for eligibility, legality notification inviting applications from eligible candidates. Held withdrawal of the said notification at this stage and issuance of fresh notification inviting applications from candidates eligible under the new rules held not illegal."

The facts of the present case are not comparable. The services of workman is covered by Bipartite Settlement. The Bipartite Settlement provided for absorption of temporary employee working for certain number of days during July, 1975 till extended period 1993. Workman was continuously working from 1993 till his discontinuance in 1997. The ratio cannot be applied to the present case at hand.

"Ratio in case of Shankarsan Dash *versus* Union of India reported in 1991(3) Supreme Court Cases 47. That candidate included in merit list has no indefeasible right to appointment even if vacancy exists."

It cannot be applied to present case. The claim of the applicant is based on the settlement to absorb temporary employee for certain days as per the settlement. There was no execution for selection of the candidates as per the settlement.

"In Case of Range Forest Officer *versus* S.T. Hadimani reported in 2002(3) Supreme Court Cases 25. Their Lordship held retrenchment compensation—completion of requisite length of continuous service where the workman claim that he had worked for more than 240 days in the year preceding his termination was denied by the employer held it was for the claimant to lead evidence to that effect held workman's affidavit was not sufficient evidence for that purpose."

In present case, IInd party has admitted in Written Statement and evidence of management's witness that during April 94 to 97 workman had worked for 840 days. If it is decided by 3, working days comes to 280 days during each calendar year. The burden is already discharged. Therefore the ratio in above cited case cannot be applied to present case at hand.

11. Learned counsel for workman Mr. Pranay Choubey relies on ratio held in

"Case of Medical *versus* Dashrathsingh. In para-19 of the judgment their Lordship observed the judgment of the constitution bench in Secretary, State of Karnataka *versus* Uma Devi and other decisions in which this Court considered the right of casual, daily wage, temporary and adhoc employees to be regularised/continued in service or paid salary in the regular time scale, appears to have unduly influenced the High court's approach in dealing with the appellant's challenge to the award of the Labour Court. In our view, none of those judgments has any bearing on the interpretation of Section 25-F of the Act and employer's obligation to comply with the conditions enumerated in that section."

Ratio held in above cited case is clear that workman cannot be denied benefit for violation of Section 25-F of I.D. Act as per ratio held in case of State of Karnataka *versus* Uma Devi.

12. In present case, the applicant's claim is based on Bipartite Settlement providing absorption of temporary employees. Workman was called for interview, thereafter he was working continuously from April 94 to April 97, His services are terminated without notice retrenchment compensation is not paid. Therefore discontinuation of workman is in violation of Section 25-F of I.D. Act. For above reasons, I record my finding in Point No. 1 in Negative.

13. Point No. 2- In view of my finding in Point No. 1 that discontinuation of services of workman is in violation of Section 25-F of I.D. Act and as such illegal, question arises whether the workman is entitled for regularization. Considering the working days of workman from 1983-84 as 193 days, workman has fulfilled conditions for absorption as permanent employee. He was then working from April 94 to 97 for 840 days. Workman was entitled for protection of Section 25-F of I.D. Act. His services were terminated without notice. Workman was not absorbed as per settlement Exhibit W-7. Exhibit M-1 working days of workman are considered for the period 87 to 91. Workman has completed more than 30 days, 70 days provided in clause III "C" Category. Workman should have been absorbed as permanent employee. Management has not produced documents about vacancy of messenger during the relevant period. Workman is discontinued in 1997. His evidence is silent what work he was doing after

discontinuation from service. Management has also not adduced that the workman was in gainful employment. Considering facts of the case, workman deserves to be reinstated. On the point of back wages, learned counsel for workman Shri Pranay Choubey produced copy of judgment in R/4/2007 decided by the undersigned. In said case, 50 % back wages were allowed considering length of service of workman in said case during 79 to 99 almost 22 years. Workman was called for interview on 22-9-89 and allowed to work in branch from 1992 to 1997. Considering the facts, reinstatement of workman with 30 % back wages would be appropriate. Accordingly I record my finding in Point No. 2.

14. In the result, award is passed as under:—

(1) Action of the management of Asstt. General Manager, State Bank of India, Region-I, Bhopal in terminating the services of Shri Babulal Dixit S/o Mishrilal Dixit *w.e.f.* 23-4-97 and not regularizing him is illegal for violation of section 25-F of I.D. Act.

(2) IInd party is directed to reinstate workman with continuity of service with 30 % back wages.

Amount as per above order shall be paid to workman within 30 days. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R.B. PATLE, Presiding Officer

नई दिल्ली, 3 फरवरी, 2014

कांआ 631.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट (संदर्भ संख्या 170/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03/02/2014 को प्राप्त हुआ था।

[सं. एल-12012/276/2001-आई आर (बी-1)]
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 3rd February, 2014

S.O. 631.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 170/2001) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 03/02/2014.

[No. L-12012/276/2001-IR(B-I)]
SUMATI SAKLANI, Section Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR
No. CGIT/LC/R/170/2001**

PRESIDING OFFICER: SHRI R.B. PATLE

General Secretary,
Dainik Wetan Bhogi Bank Karmchari
Sangathan, 9, Sanwer Road,
Ujjain (MP)

...Workman/Union

Versus

Dy. General Manager,
State Bank of Indore
(now State Bank of India),
Zonal Office, Jail Road,
Bhopal (MP)

...Management

AWARD

Passed on this 15th day of January 2014

1. As per letter dated 15-11-2001 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No. L-12012/276/2001-IR(B-I). The dispute under reference relates to:

"Whether the action of the management of State Bank of Indore (now State Bank of India) Bhopal in not regularising the services of Shri Nirmal Sen, temporary peon after continuing him to work continuously from 15-4-96 to 16-10-2000 but terminating him and not paying bonus for the above period is legal and justified? If not, to what relief the workman is entitled to?"

2. After receiving reference notices were issued to the parties. Ist Party workman filed Statement of Claim at Page 2 to 6. The case of workman is that IInd party Bank had issued circular dated 29-8-89 prohibiting employment to daily wage employees. The circular dated 7-9-92 was issued prohibiting employment of daily wage employees. The workman submits that similar circulars were issued on 11-9-97 for implementation of above circulars. That he was engaged on daily wages Rs. 30 per day from 15-4-96. The wages were increased to Rs. 35, 40, 45, 50, 55, 60, 65 & 70. That Branch Manager reduced wages from Rs. 70 to Rs. 50 per day. That he was performing different kind of work in store, stationery. Documents are available in the Bank. That he had completed 240 days continuous service. He was paid bonus. His services were discontinued from 15-10-2000 without notice. He was not paid retrenchment compensation. His services are terminated in violation of Section 25-F, G, H of I.D. Act workman prays for his reinstatement and bonus.

3. IInd party filed written statement at Page 7/1 to 7/8. IInd party filed Written Statement at page 7/1 to 7/8.

IInd party submits that service conditions of Bank employees are governed by Sastry Award, Desai Award. That sub staff remained absent therefore employees are engaged on daily wages. The name of workman was not sponsored through Employment Exchange. He was daily engaged for 2-3 hours. The workman was paid wages at the agreed rate. His engagement came to end at end of each day. That the dispute is not tenable under Section 2(k) of I.D. Act and deserves to be rejected. Workman was not appointed following recruitment process therefore he is not entitled to any relief. IInd party has referred to ratio held in various cases. It is contented that the dispute is raised after long delay is not tenable. The workman is not entitled to regularization. On such grounds, IInd party prays for rejection of the claim of the workman.

4. Workman through Union representative Ram Nagwanshi filed rejoinder at Page 12/1 to 12/3. Workman has reiterated that his services were terminated without notice, retrenchment compensation was not paid. Other junior employees were continued Termination of his service is illegal.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

(i) Whether the action of the management of State Bank of Indore (now State Bank of India) Bhopal in not regularizing the services of Shri Nirmal Sen, temporary peon after continuing him to work continuously from 15-4-96 to 16-10-2000 but terminating him and not paying bonus for the above period is legal and justified?	Termination of service of workman is in violation of Section 25-F of I.D. Act.
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(ii) If not, what relief the workman is entitled to?"	As per final order.
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REASONS

6. Workman is challenging termination of his services for violation of Section 25-F of I.D. Act, His services were terminated without notice, he was not paid retrenchment compensation, he was not given employment. IInd party denied material contentions of workman rather it is pleaded that workman was engaged for 2-3 hours. Wages at A-Grade rate were paid to him. Workman filed affidavit of his evidence supporting his contentions that he had completed 240 days continuous service. He was working in the Bank from 15-4-96 to 16-10-2000. His services were terminated without notice, retrenchment compensation was not paid to him. In his cross-examination, workman says that he was doing cleaning work, supplying drinking water,

he was paid weekly wages. He was working under different Branch Managers. He denies suggestion that he was working only for 2-3 hours. The Bank has filed affidavit of evidence of Shri Mahadeo Barapatre. The affidavit of management's witness is consistent with the contentions raised in written statement filed by IInd party that the workman was engaged for 2-3 hours. He was not appointed following recruitment procedure. His name was not sponsored through Employment Exchange. Management's witness in his examination has admitted vouchers and marked Exhibit W-3 to W-74. Those vouchers relating to payment of wages clearly shows that the workman was working in the Bank from 1996 to 2000. He had completed 240 days continuous service preceding his termination. Management's witness claims ignorance about payment of retrenchment compensation. Evidence of management's witness is also silent about serving notice for termination of his services. Thus the evidence of workman is corroborated by documents W-3 to W-74. It is established that the workman was working for more than 240 days continuous service. Section 25-F of I.D. Act was not applied, therefore termination of service of workman is illegal.

7. Union Representative Ram Nagwanshi relies on ratio held in—

"Case of Samishta Dube and City Board Etawah and another reported in 1999(81)FL. R 746. Ratio held in the case by their Lordship is that in absence of any agreement between the employer and the workmen in behalf the employer shall ordinarily retrench the workmen who was the last person to be employed in that category, unless for reasons to be recorded, the employer retrenches any other person."

Next reliance is placed in case of Regional Manager, SBI *versus* Rakesh Kumar Tiwari reported in 2006(108) FLR 733. Their Lordship held provisions of Section 25-G, H of I.D. Act doesnot require continuous employment of workman within meaning of Section 25-B of I.D. Act before he could have been retrenched.

In present case, the evidence of workman that he was continuously working from 1996 to 2000 is corroborated by document Exhibit W-3 to W-74. Therefore the ratio held in those cases cannot be beneficially applied. For same reasons, ratio held in case of Jaipur Development Authority *versus* Ramsahai and another reported in 2007(1) Supreme Court Cases (L&S) 518 cannot be beneficially applied in the case. The facts of present case are not comparable. However the evidence on record clearly shows that services of workman arc terminated in violation of Section 25-F of I.D. Act.

8. Learned counsel for IInd party Mr. Praveen Chaturvedi relies on ratio held in case of—

"Mahboob Deepak *versus* Nagar Panchayat, Gajraula and another reported in 2008(1) Supreme Court Cases

575. Their Lordship dealing with point of regularization of daily wages and their claim for regularization held that respondent is local authority, no appointment can be made by local authority without following recruitment rules. Any appointment made in violation of the said rules as also the constitutional scheme of equality as contained in Article 14, 16 of the constitution. Their lordship further held merely because an employee has completed 240 days of work in a year preceding the date of retrenchment, the same would not mean that his services were liable to be regularized."

Present reference doesnot relate to the claim for regularization of workman. Rather it relates to illegal termination. Therefore the ratio held in above case cannot be beneficially applied.

9. Next reliance is placed in case of—

"Hindustan Petroleum Corporation Ltd., *versus* Ashok Ranghba Ambre reported in 2008(2) Supreme Court Cases 717. Their Lordship dealing with Section 25-F of I.D. act setting aside of illegal termination is violative of Section 25-F held doesnot necessarily follow that workman is entitled to status of permanency. The word "regular" and "regularization" donot connot "permanence."

10. The reference doesnot relate to regularizat ion of workman rather it relates to illegal termination. As discussed above, the services of workman are terminated in violation of Section 25-F of I.D. Act, Therefore I record my finding on Point No. 1 accordingly.

11. Point No. 2- In view of my finding in Point No. 1 that termination of service of workman is in violation of Section 25-F of I.D. Act, question arises whether the workman is entitled for reinstatement with back wages. As per evidence, workman was working in the Bank from 1996 to 2000 for less than 5 years. His name was not sponsored through Employment Exchange, recruitment procedure was not followed. In my considered view, it would not be proper to grant relief of reinstatement to workman rather grant of reasonable compensation would meet the ends of justice. In my considered view, compensation Rs.75,000 would be appropriate. Accordingly I record my finding in Point No. 2.

12. In the result, award is passed as under:—

(1) The action of the management in terminating the services of Ist Party workman is in violation of Section 25-F of I.D. Act, as such illegal.

(2) IInd party is directed to pay compensation Rs. 75,000 to the workman.

Amount as per above order shall be paid lo workman within 30 days. In case of default, amount shall carry 9% interest per annum from the date of award till its realization.

R.B. PATLE, Presiding Officer

नई दिल्ली, 3 फरवरी, 2014

का०आ० 632.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ बीकानेर एण्ड जयपुर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट (संदर्भ संख्या 114/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03/02/2014 को प्राप्त हुआ था।

[सं. एल-12012/51/2005-आई आर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 3rd February, 2014

S.O. 632.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref No. 114/2005) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of State Bank of Bikaner and Jaipur, and their workmen, received by the Central Government on 03/02/2014.

[No. L-12012/51/2005-IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/114/2005

PRESIDING OFFICER: SHRI R.B. PATLE

The Vice President,
State Bank of Bikaner and Jaipur Employees Union,
6, Kanti Mansion, P.B.No-145,
Sanyogita Ganj,
Indore.

....Workman/Union

Versus

The Asstt. General Manager,
State Bank of Bikaner and Jaipur,
Zonal Office, 746, P.B. Hinduja Marg,
Khar (West), Mumbai.

...Management

AWARD

(Passed on this 13th day of January 2014)

1. As per letter dated 5-10-2005 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under

Section-10 of I.D. Act, 1947 as per Notification No. L-12012/51/2005-IR(B-I). The dispute under reference relates to:

"Whether the action of the management of Asstt. General Manager, State Bank of Bikaner and Jaipur in not offering full time employment to Shri Kailash Singh Chauhan *w.e.f.* 1-1-91 is justified? If not, to what relief the workman is entitled for?"

2. After receiving reference, notices were issued to the parties, Ist party workman filed Statement of claim at Page 5/1 to 5/3. Case of Ist party workman is that at the time of initial appointment, the Bank erroneously given designation of sweeper which denotes a person employed exclusively to perform menial jobs such as cleaning toilets, urinals etc. That Ist party workman was performing duties of peon cum Farrash. He had to perform manual and not menial work- That since beginning, workman was doing job of dusting, sweeping of Branch Floor, walls, roof etc. and keeping and taking out of books and stationery from Almirah, That he was paid 1/3rd, 1/2, 3/4th wages respectively from 21-5-89, 1-8-90 and 1-1-91. He wages were paid to commensurate to increase in work load arising out of increase in business. There is old policy in the Bank that even wages of sweeper are decided on basis of area of the premises of the branch office. The sweeper working in the Bank having more than 5000 sq. feet premises is eligible for full time employment. As per Bank's circular dated 29-4-92, the wages are paid. The existing premises of the Branch was increased by an agreement dated 25-3-03 to 5709 sq. ft. that workman was doing cleaning, dusting, sweeping work of walls, roof, furniture etc.

3. The service conditions of workman are determined as per Bipartite Settlement. That he was employed by Branch Manager of SBI regularly. He had submitted repeated representations to the management. As per para 20.6 of Ist Bipartite Settlement workman claims to be entitled to preferential treatment. He further submits that he is superseded by many juniors who were observed as full time members of the sub staff. The workman prays for full time employment from 1-1-91. As per recruitment policy of the Bank he has right to gainful employment. The action on part of the management not giving him full time employment is illegal. On such ground, workman prays for status of full time employee.

4. IInd party filed Written Statement at Page 11/1 to 11/9. IInd party submits that the wages of the employee were upgraded from 3/4th scale to full scale *w.e.f.* 25-6-07. As per order dated 30-10-07, his designation is changed from part time sweeper to sweeper-cum-peon. Workman had written letter dated 5-11-2007 to his Advocate Shri Krishnakant Dubey for withdrawal of the case as his demands are satisfied. It is submitted that the workman wants to withdraw case immediately. That said information has not been given to this Tribunal. It is the reason case is proceeding despite the grievances are settled. The case is

not maintainable as Ist party workman was one among 45 employees in R/75/89 Raj Kumar Pateria *versus* State Bank of Bikaner and Jaipur. The claim was rejected holding that there was no case for interference. That the reference is barred on principles of res-judicata.

5. IInd party further submits that workman was appointed as part time sweeper as per his application dated 1-9-88. He was paid lumpsum salary Rs. 100/- per month. Subsequently he was paid 1/3rd salary from 25-5-89, he was confirmed as 1/3rd part time employee from 19-6-90. His pay was increased to 3/4th. That Ist party workman was working for 29 hours per week. The area which is required to be cleaned is less than 4500 sq. ft., therefore workman is not entitled to claim full time wages. That the circular specifically provides if area is to be cleaned between 3501 to 5000 sq. ft. and working hours between 19 to 29 hours per week. Such an employee is entitled to 3/4th pay scale. IInd party has reiterated that area of the branch was less than 5000 sq.ft. workman is not entitled to full pay. All other contentions of workman are denied. It is incorrect that based on increase in area of the branch office, the workman is entitled to full wages as the total area of the premises is 5709.05 sq. ft. whereas the carpet area is 4445.72 sq. ft. Therefore workman is paid 3/4th pay scale with proportionate annual increment., workman was working for 29 hours per week and the area which he is required to clean is less than 4500 sq. ft. that the recommendations of Branch manager are not accepted by Controlling Authority. All adverse contentions of workman are denied.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

(i) Whether the action of the management of Asstt. General Manager, State Bank of Bikaner and Jaipur is not offering full time employment to Shri Kailash Singh Chauhan *w.e.f.* 1-1-91 is justified? Partly in Negative

(ii) If not, what relief the workman is entitled to?" As per final order.

REASONS

7. Workman is claiming status of full time employee (Sweeper) from 1-1-1991. Claim of workman is denied by IInd party. As per IInd party, the area of the branch office is less than 5000 sq. ft. such employee is entitled to 3/4th pay scale. The area of the Bank was less than 5000 sq. ft. Therefore the workman was not entitled to status of full time employee. Workman has been upgraded to full scale wages *w.e.f.* 25-6-07 as per order dated 30-10-07. Thus the Bank has already accorded status of full time employee to the workman from 25-6-07. The marginal dispute is between

parties whether the workman is entitled to status of full time employee from 1-1-91 or whether he is entitled to such status from 4-4-03 when premises of the Bank's office was increased to 5709 sq. ft. as per agreement. The documents produced by workman are admitted. Exhibit W-1 is copy of appointment letter of workman at Rs.100/- per month. Exhibit W-2 is appointment of Ist party workman as part time sweeper on 1/3rd wages *w.e.f.* 1-6-90, Exhibit W-3 is permission granted for appointment to workman on 1/3rd wages. Exhibit W-4 is permission granted for appointment of Ist party workman on 1/2 scale of wages. Exhibit W-9 shows 29 working hours of the workman from 1-1-1991. Exhibit W-6 is circular providing working hours and scale of pay to be paid as per area of the branch office. If the area of the branch office is 5001 sq. ft and above, 29 weekly working hours, the employee is to be paid full scale wages. Exhibit W-7 also provides the same rates. Exhibit W-9 to 16 are copies of representations submitted by workman time to time for claiming status of permanent employee. The workman filed affidavit of his evidence but remained unchallenged.

8. Documents produced by IInd party M-1 shows name of workman in R/75/89, award passed by this Tribunal in favour of the management. The dispute under reference in said case was about termination of service and not providing employment etc. The relief prayed by workman in present dispute is not identical. Therefore dispute in present reference is not barred by Exhibit M-1. M-2 is application submitted by workman conveying his willingness to work as part time employee on wages Rs. 100/- per month. Documents Exhibit M-3 to M-9 are copies of documents produced by workman discussed earlier. As per documents Exhibit M-10, workman was allowed full scale wages *w.e.f.* 25-6-07 subject to withdrawal of keys. By said documents, IInd party has virtually accepted claim of workman for status of full time employee. Workman has not proved agreement about increase of the area of office building by agreement dated 4-4-03. There is no evidence from management that area of the office building of the Bank was changed at any time, the workman is claiming status of full time employee from 1-1-1991, 4-4-03. He is granted full time status from 25-6-07. The legal position is shattered that the award should be made operative from the date of order of reference. The present reference was made as per order dated 5-10-2005, therefore full time status to the workman can be granted from 5-10-05 and not prior to said date. Therefore I record my finding in Point No. 1 in partly Negative.

9. In the result, award is passed as under:—

(1) Action of the management of Asstt. General Manager, State Bank of Bikaner and Jaipur in not offering full time employment to Shri Kailash Singh Chauhan *w.e.f.* 1-1-91 is illegal.

(2) IInd party is directed to give status of full time

employee to the workman from 5-10-05 with difference of wages. The difference of wages be paid within 30 days.

Amount as per above order shall be paid to workman within 30 days. In case of default, amount shall carry 9 % interest per annum from the date of award till its realisation.

R.B. PATLE, Presiding Officer

नई दिल्ली, 3 फरवरी, 2014

कांआ 633.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जबलपुर के पंचाट संदर्भ संख्या 49/2004 को प्रकाशित करती है, जो केन्द्रीय सरकार को 03/02/2014 प्राप्त हुआ था।

[सं एल-12012/276/2003-आई आर(बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 3rd February, 2014

S.O. 633.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. No. 49/2004 of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial Dispute between the management of State Bank of India, and their workmen, received by the Central Government on 03/02/2014.

[No.L-12012/276/2003-IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/49/2004

PRESIDING OFFICER: SHRI R.B.PATLE

Shri Ganesh Vila,
S/o Shir K.L. Vila,
R/o 1124, Harifatak,
Mhow, Tehsil Mhow,
Indore (MP)

.....Workman

Versus

Zonal Managar,
State Bank of India,
Region III, Zonal Office,
Hamidia Road, Bhopal

..... Management

A W A R D

Passed on this 26th day of November 2013

1. As per letter dated 5-4-04 by the Government of India, Ministry of Labour, New Delhi, the reference is

received. The reference is made to this Tribunal under Section - 10 of I.D.Act, 1947 as per Notification No. L-12012/276/2003-IR (B-I). The dispute under reference relates to:

"Whether the action of the management of Zonal Manager, State Bank of India, Region-III Bhopal in terminating the services of Shri Ganesh Vila, S/o Shri K.L. Vila, *w.e.f.* 1994 is justified? If not, to what relief the workman is entitled for?"

2. After receiving reference, notices were issued to the parties. Workman has submitted statement of claim at Page 2/1 to 2/4. The case of Ist party workman is that he has submitted application for post of clerk as per advertisement issued by the IInd party Bank, After Written Test held on 24-6-84, he was found successful. He was appointed as clerk at Narsingharh Branch, Distt. Damoh on 29-7-85. He worked satisfactorily till January 94. That workman was suffering from serious illness. He had proceeded on long leave. He had given intimation of his illness by Telegram on 16-8-94 and by UPC on 9-8-94. The original medical certificate were submitted.

3. It is alleged that IInd party issued letter dated 22-6-94 to him for reporting duty within 30 days otherwise he will be deemed to have voluntarily retired from service. He was called to deposit one month salary and allowance within 15 days. However he did not deposit the amount as he could not have said to be voluntarily retired from service. IInd party issued letter dated 27-9-94 asking Ist party workman for receiving termination benefits. That he wanted to serve the Bank after his complete recovery of illness, he did not accept termination benefits. That letter dated 7-10-94 was issued by the IInd party illegally treating him voluntarily abandoned from service from 13-8-94. Ist party was directed to pay one month's pay and allowance to the Bank otherwise the Bank would file Civil Suit against him. IInd party did not allow him to join duty on 14-12-94. He submitted joining letter alongwith medical certificate. Ist party workman submits that his services are terminated without enquiry which is illegal. On such grounds, Ist party workman prays for his reinstatement with back wages.

4. IInd party filed Written Statement. IInd party totally denied claim of the workman. the IInd party did not dispute that Ist party workman was appointed as clerk and he was working in the branch. 2nd party submits that workman remained unauthorisely absent from duty since 4-10-93 except for few days on October 1993, November 1993 and January 1994. The notices were sent to workman regarding his unauthorized absence calling upon him to join duty. The final notice was served on workman on 22-6-94 to report on duty within 30 days. The notice was received by workman on 14-7-94 but did not report on duty within stipulated period. He voluntarily abandoned the service. The notice was sent to workman on 7-10-94 on address

1124, Kanchan Gali. Hari Phatk, Mhow. Said notice was returned with postal remark - unclaimed returned to sender. That as per the Bipartite Settlement, caluse 17 even after service of notice to join duty within 30 days, the employee fails to join duty is deemed to have voluntarily retired. The IInd party reiterates that despite of notices issued, the workman failed to join duty within 30 days. Consequently he is deemed to have abandoned service. On such ground, IInd party submits that the action of the IInd party management is legal. Workman is not entitled to relief claimed by him.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

(i) Whether the action of the management of Zonal Manager, State Bank of India, Region-III Bhopal in terminating the services of Shri Ganesh Vila, S/o Shri K.L. Vila, *w.e.f.* 1994 is justified? In Negative

(ii) If not, what relief the workman is entitled to? As per final order.

REASONS

6. Termination of service is challenged by the workman. There is no dispute that the workman was working in Bank from 29-7-85 till termination of his service. *i.e.* from October 1994. Workman filed affidavit of his evidence stating that he has selected as clerk cum cashier in the Bank. He was posted at Narsingharh Branch, Damoh Distt. from 29-7-85. That letter dated 22-6-94 was served on him by IInd party Bank for reporting for duty within 30 days failing which he would be deemed to have voluntarily retired. That IInd party issued letter dated 7-10-94 unilaterally treating him to have voluntarily retired from Bank Service from 13-8-94. That Bank did not allow him to join duty. That he had recovered from illness. He had written letter dated 14-12-94 requesting to resume duties in the Bank. Medical Certificates were submitted by him of different dates. That his services were terminated unilaterally by the Bank. In his cross examination, workman admit that he was attending duties for 2-3 days and remaining absent from duty as he was suffering from illness. After he suffered illness, he has send telegram. Receipts are filed by him. He had sent letter by UPC on 9-8-94. Telegram was send on 16-8-94. Thereafter he was absent in the Bank. Prior to it, he was remaining absent. The evidence in cross-examination of the workman shows that he was absent from duty on account of his illhealth. when he was absent earlier in time, he was not sanctioned leave. He received notice dated 19-11-93, 15-2-94 and final notice dated 22-6-94 asking him to attend duty. That after

receiving notice dated 19-11-93, he attended duty for 2-3 days. In January 1994, he worked for 2-3 days.

7. The evidence of management's witness Ms. Madhu Arora is consistent with the contentions of IInd party in Written Statement that workman remained absent from October 1993 except few days in October, November 1993 and January 1994. Workman remained absent, notice was issued to him on 22-6-94. Said notice was issued on 14-6-94. In his cross-examination, management's witness claims ignorance whether the notice was signed by registered post. After lapse of more than 90 days, no enquiry was held against him. Chargesheet was not issued to him.

8. At the time of argument, learned counsel for IInd party Shri Shrotri submits that for unauthorized absence, notices was issued to the workman and as he did not attend duties within 30 days as per notice, as per Para-17 of the Bipartite Settlement, he is deemed to be retired. For sake of clarity it is necessary to give verbatim of Para-17 (a) of Bipartite Settlement.

"Para-17(a)—When an employee absents himself from work for a period of 90 or more consecutive days, without submitting any application for leave or for its extension or without any leave to his credit or beyond the period of leave sanctioned originally/ subsequently or when there is a satisfactory evidence that he has taken up employment in India or when the management is reasonably satisfied that he has no intention of joining duties, the management may at any time thereafter give a notice to the employee at his last known address calling upon him to report for duty within 30 days of the date of the notice, stating *inter alia* the ground for coming to the conclusion that the employee has no intention of joining duties and furnishing necessary evidence, where available. Unless the employee reports for duty within 30 days of the notice or gives an explanation for his absence within the said period of 30 days satisfying the management that he has not taken up another employment or avocation and that he has no intention of not joining duties, the employee will be deemed to have voluntarily retired from the Bank's service on the expiry of the said notice. In the event of the employee submitting a satisfactory reply, he shall be permitted to report for duty thereafter within 30 days from the date of the expiry of the aforesaid notice without prejudice to the Bank's right to take any action under the law or rules of service."

The notice issued to the workman Exhibit W-4 finds reference that the workman was unauthorisely absent from duty since 4.10.93 except for following dates in October 1993- 19th & 21st, In November 1993-1st, 2nd, 3rd, 4th, 5th, 6th, 9th, 10th, 11th & 12th and in January 1994- 21st, 22nd, 24th, 25th, 28th, 29th to 31st. The notice is not stating that

the workman was absent more than 90 days. The period of unauthorized absence is not stated. In para-2 of the notice, there is reference of Para 522(3) of Sastry Award. *Vide* Exhibit W-5, letter dated 27.9.94 workman was requested to collect his retiral dues. Notice *vide* Exhibit W-6 dated 7.10.94 workman was informed that he was absent from duty unauthorisely from 4.10.93 with reference to letter dated 22.6.94 sent to him. He was called to report for duty within 30 days. To be precise, notice Exhibit W-6 doesnot also show that he is unauthorized absence for more than 90 days.

9. The period of absence is not disclosed in said notice. Workman was repeatedly informed to collect his retiral dues as per Exhibit W-7, W-8. Evidence of workman that he had sent letter by UPC on 9.8.94 and telegram on 16.8.94 is not shattered. Workman also stated that he has submitted original Medical Certificate.

10. Management's witness in his cross-examination says that workman was regular employee. Workman was terminated from service on ground of unauthorized absence. Workman submitted medical certificate after lapse of more than 90 days. Evidence of the management's witness doesnot show what action was taken on the medical certificates submitted by the worker. If an employee is suffering from illness and submits medical certificates, the management is expected to take rational decisions. Notice issued to the workman Exhibit W-4 does not find reference to Bipartite Settlement Para-17-A, rather it finds reference of Para 522(3) of Sastry Award. The evidence shows that management was not clear about violation of Para-17-A of Bipartite Settlement. The period of unauthorised absence was not disclosed in the notice. The language in notice Exhibit W-4 and W-6 is not clear about unauthorized absence. Ist party workman was working in the Bank as clerk from 1985. There is not evidence that he was absent from duty in the past. When workman suffers from illness and he submits Medical Certificates, he also given letter requesting him to join the duty. The management did not consider the facts that workman was suffering from illness. Management even did not considers whether any kind of leave was in his credit. Why leave at his credit was not granted to him. IInd party has acted mechanically.

11. Learned counsel for IInd party relies on ratio held in—

"Case of Punjab and Sind Bank and others *versus* Sakattar Singh reported in 2001(1) Supreme Court Cases 214. Their Lordship considering unauthorized absence for 90 days or more consecutive days beyond sanctioned period of leave. Under Clause 16 of IVth Bipartite Settlement, termination of service in such circumstances held is not a punishment of misconduct but only a recognition of the realities of the situation and doesnot result in violation of

principles of natural justice. Therefore no domestic enquiry is necessary.

In case of Regional Manager Bank of Baroda versus Anita Nandrajog reported in 2009(9) Supreme Court Cases 462. Their Lordship of the Apex Court dealing with dismissal without enquiry when permissible. Their Lordship considering unauthorized absence by respondent on two occasions of more than 266 days condoned by Bank, subsequent absence of more than 150 days without sanction of leave. Appellant Bank invoking Clause 17(b) of Vth Bipartite Settlement issuing notice to the respondent to join service in 30 days, failing which it would be presumed she had voluntarily terminated service. Their Lordship held the management was extremely lenient by condoning respondent's absence. Respondent's behavior of remaining absent without leave for such long periods regrettable and unfortunate. No establishment can function if it allows its employees to behave in such a manner.

The facts of the present case are little different. Workman has submitted medical certificates about his illness. He sent telegram as well as letter by UPC. His evidence on above point is not shattered. As discussed above, notices Exhibit W-4 to 6 issued to workman does not clearly shown the period of unauthorized absence. When workman suffers from illness and submits medical certificate, his absence may not amount to unauthorized absence.

12. Next reliance is placed by Learned counsel in case of

"Regional Manager, Central Bank of India versus Vijay Krishna Neema and others reported in 2009(5) Supreme Court Cases 567. Their Lordship held normally unauthorized absence is a grave misconduct but statutory rules or employer employee agreement such as Shastri Award may provide that unauthorised absence constitutes cessation of employment."

13. Considering the evidence of management's witness that medical certificates were submitted by the workman after 90 days appears to have not been considered by the management. The order of voluntary retirement passed by IInd party is mechanically passed. The ground of illness, explanation submitted workman that he was suffering from illness and medical certificate produced are not taken into consideration. Therefore the ratio in above case cannot be applied to case at hand. For above reasons action of the management terminating services of workman cannot be said proper. Accordingly I record my finding in Point No. 1.

14. Point No. 2—In view of my finding in Point No. 1 that the termination of services of workman is not proper, question arises to what relief workman is entitled? The evidence of workman is not clear what work he was doing after voluntary termination of his service. Reinstatement

with full back wages would not be appropriate. In my considered view, considering facts and evidence on record, reinstatement without back wages would be appropriate. Accordingly I record my finding in Point No. 2.

15. In the result, award is passed as under:—

(1) Action of the management of Zonal Manager, State Bank of India, Region-III Bhopal in terminating the services of Shri Genesh Vila, S/o Shri K.L. Vila, *w.e.f.* 1994 is not proper and legal.

(2) IInd party management is directed to reinstate workman but without back wages.

R.B. PATLE, Presiding Officer

नई दिल्ली, 3 फरवरी, 2014

कांआ 634.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार छिनदवाडा सिनी क्षेत्रीय ग्रामीण बैंक प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जबलपुर के पंचाट (संदर्भ संख्या 16/97) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03/02/2014 प्राप्त हुआ था।

[सं एल-12012/161/96-आई आर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 3rd February, 2014

S.O. 634.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 16/97) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the management of Chhindwara Seoni Kshetriya Gramin Bank and their workmen, received by the Central Government on 03/02/2014.

[No.L-12012/161/96-IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR

No. CGIT/LC/R/16/97

PRESIDING OFFICER: SHRI R.B.PATLE

Shri Manasram
S/o Shri Bapu Nagre,
PO Khamra, Soser,
Chhindwara

..... Workman

Versus

The Chairman,
Chhindwara Seoni Kshetriya Gramin Bank,
Chhindwara (MP)

..... Management

AWARD

Pressed on this 3rd day of January 2014

1. As per letter dated 31.12.96 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-12012/161/96-IR(B-I). The dispute under reference relates to:

"Whether the action of the Chhindwara Seoni Kshetriya Gramin Bank, Chhindwara (MP) in stopping from duty to Shri Mansaram S/o Babu Nagare from the Bichua (kamnpani) Branch of Chhindwara Seoni Kshetriya Gramin Bank *w.e.f.* 1-8-84 is justified or legal? If not, to what relief the workman is entitled to?"

2. After receiving reference, notices were issued to the parties. Ist party workman filed Statement of Claim at Page 7/1 to 7/4. The case of Ist party workman is that he belongs to Schedule Caste. His name was registered in Employment Exchange, Distt. Chhindwara. He has passed 8th standard. Considering conditions of eligibility, he was offered post of peon by IInd party. He was continuously working as peon with IInd Party from 21-8-91 to 2-11-93 he completed 240 days continuous service, he was given undertaking that after completion of probation period of 240 days, he would be offered permanent status and monthly pay of regular peon. That IInd party did not follow said undertaking. His services were not regularized. He has submitted representations for regularization of services. He was suddenly discontinued from 1-8-94 without assigning reasons. He was not paid retrenchment compensation. The termination of his service is illegal. On such ground, he prays for reinstatement with regularization in service.

3. IInd party failed to file Written Statement IInd party was proceeded exparte on 14-6-2003.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

(i) Whether the action of the Chhindwara Seoni Kshetriya Gramin Bank, Chhindwara (MP) in stopping from duty to Shri Mansaram S/o Babu Nagare from the Bichua (Kamnpani) Branch of Chhindwara Seoni Kshetriya Gramin Bank <i>w.e.f.</i> 1-8-84 is justified?	In Affirmative
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(ii) If not, what relief the workman is entitled to?"	Workman is not entitled to relief prayed by him.
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REASONS

5. Ist party workman is challenging termination of his services for non-payment of retrenchment compensation. That he had completed 240 days continuous service in the branch. His services were suddenly terminated without notice. IInd party has failed to file Written Statement. Though IInd party is proceeded exparte, workman has failed to adduce evidence in Supoort of his claim. The evidence of workman is closed on 31-12-2013. IInd party was already proceeded exparte. Parties have not participated in reference proceeding, no evidence is adduced by either parties. Therefore I record my finding in Point No. 1 in Affirmative.

6. In the result, award is passed as under:—

(1) The action of the Chhindwara Seoni Kshetriya Gramin Bank, Chhindwara (MP) in stopping from duty to Shri Mansaram S/o Babu Nagare from the Bichua (kamnpani) Branch of Chhindwara Seoni Kshetriya Gramin Bank *w.e.f.* 1-8-84 is proper.

(2) Workman is not entitled to relief prayed by him.

R.B. PATLE, Presiding Officer

नई दिल्ली, 3 फरवरी, 2014

का०आ० 635.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक आफ इंदौर के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट (संदर्भ संख्या 219/98) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03/02/2014 प्राप्त हुआ था।

[सं० एल-12012/57/98-आईआर(बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 3rd February, 2014

S.O. 635.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 219/98) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in industrial dispute between the management of State Bank of Indore and their workman, received by the Central Government on 03/02/2014.

[No. L-12012/57/98-IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR**

No. CGIT/LC/R/219/98

PRESIDING OFFICER: SHRI R.B. PATLE

General Secretary,
Daily Wages Bank Employees Association,
9, Sanwer Road,
Ujjain ...Workman/Union

Versus

Managing Director,
State Bank of Indore,
Head office,
5, Y. N. Road, Indore. ...Management

AWARD

Passed on this 16th day of January 2014

1. As per letter dated 23-9-98 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-12012/57/98-IR(B-I). The dispute under reference relates to:

"Whether the action of the management of Managing Director, State Bank of Indore in terminating the services of Shri Suresh Purohit *w.e.f.* 4-1-97 is justified? If not, to what relief the workman is entitled for?"

2. After receiving reference notices were issued to the parties. Case of Union is that workman Shri Suresh Purohit was engaged by the IInd party Bank for cleaning work from 10.30 AM to 6 PM. Said workman was engaged on daily wages from 24-4-95. The workman was rendering his service with devotion. He was working under Branch Managers. He was paid wages for six days in a week. He was working for more than 8 hours a day. The record about payment of wages is available with the Bank. That workman was paid wages changing different names. When the workman asked for regularization and demanded for bonus, IInd party engaged other persons Sudhir, Santosh. Services of workman were discontinued from 4-1-97. Workman was not served with notice. 3 months pay was not paid to him. Workman have completed 240 days continuous service. He is covered as workman under Section 25(B) of I.D. Act. His services are terminated in violation of Section 33, 25-F, G & H of I.D. Act. Para 507, 520 of Sastry Award be not complied. Retrenchment compensation is not paid to the workman. On such ground, Union prays for reinstatement with consequential benefits to the workman.

3. IInd party management filed Written Statement at Page 7/1 to 7/6. Claim of Union is denied. It is contented that statement of Claim is not properly signed and verified. That Suresh Purohit is not member of Union. Union is not competent to workman. That contractor is not necessary party. Claim is bad for misjoinder of parties. Statement of Claim is not submitted as per rules in prescribed proforma. All material contentions of the Ist party are denied. That workman was continuously working with the IInd party and completed 240 days continuous service. It is denied

that workman was paid weekly wages. IInd party submits that workman was engaged as per exigencies. The wages were paid to him. Workman is not covered under Section 25B of I.D. Act, he is not entitled to protection under Section 25-F, G, H of I.D. Act Para 527 of Sastry Award is not applicable to the claim of the Ist party. That workman was not engaged following recruitment process. Workman was engaged on daily wages as per exigencies. Workman is not entitled for retrenchment compensation or notice for termination. On such ground, IInd party prays for rejection of his claim.

4. Ist party filed rejoinder at Page 8/1 to 8/3 reiterating its contentions in Statement of claim that termination of services of workman is illegal for violation of Section 25-F, G, H of I.D. Act, workman had completed 240 days continuous service.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

(i) Whether the action of In Affirmative
management of Managing
Director, State Bank of
Indore in terminating the
services of Shri Suresh
Purohit *w.e.f.* 4-1-97 is
justified?

(ii) If not, what relief the Workman is not entitled to relief
workman is entitled to? "prayed by him.

REASONS

6. Workman through Union is challenged termination of his services for violation of Section 25-F, G, H of I.D. Act. He claims that he was continuously working for more than 240 days. His services are terminated without notice, retrenchment compensation is not paid to him. IInd party denies above contention of workman. Workman produced document Exhibit w-1, circular dated 23-2-01 prohibiting engagement on daily wage employees for cleaning work etc. W-2 is reply submitted before ALC, Bhopal. IInd party had submitted that workman Shri Suresh Purohit was engaged as peon for filling water in cooler, cleaning work. He was not appointed as regular employee.

7. Workman filed affidavit of his evidence stating that he was working from 10.30 AM to 6 PM as peon in the Bank from 24-4-95. His services were discontinued from 4-1-97. Evidence of workman was closed *vide* order dated 22-5-08. The management field evidence by affidavit of Shri Dayaram Verma. Management witness has stated that workman was not continuously working from 24-4-95 to 1-1-97. In his cross-examination management's witness says that he has not knowledge about attendance of Ist party workman. He had not received any information about

payment of retrenchment compensation or notice for termination of service. Management's witness was unable to tell for how many days workman was working in the Bank. The pleadings in Statement of Claim are that the workman was paid wages in name of different persons. The evidence of workman though unchallenged is not disclosing in whose name he was paid wages, such persons are not examined if the workman received wages in name of different persons it may amount to fraud and therefore such evidence cannot be accepted. For above reasons, the evidence of the workman cannot be relied that he was continuously working in the branch for more than 240 days. Union Representative Shri Ram Nagwanshi relies on ratio held in:

"Case of Samishta Dube and City Board Etawah and another reported in 1999(81)FLR 746. Ratio held in the case by their Lordship is that in absence of any agreement between the employer and the workmen in behalf the employer shall ordinarily retrench the workmen who was the last person to be employed in that category, unless for reasons to be recorded, the employer retrenches any other person."

Nex reliance is placed in case of Regional Manager, SBI *versus* Rakesh Kumar Tiwari reported in 2006(108)FLR 733. Their Lordship held provisions of Section 25-G, H of I.D. Act does not require continuous employment of workman within meaning of Section 25-B of I.D. Act before he could have been retrenched.

In present case, termination of workman is alleged for violation of Section 25-F of I.D. Act. There is no evidence about any junior persons engaged after retrenchment of workman. Violation of Section 25-G, H of I.D. Act is not substantiated from evidence on record. Therefore ratio held in above case cannot be beneficially applied to case at hand. The evidence of workman is not cogent to establish continuous working for more than 240 days preceding his retrenchment. Therefore I record my finding in Point No. 1 in Affirmative.

8. In the result, award is passed as under:—

(1) The action of the management of Managing Director, State Bank of Indore in terminating the services of Shri Suresh Purohit *w.e.f.* 4-1-97 is proper.

(2) Workman is not entitled to relief claimed by him.

R.B. PATLE, Presiding Officer

नई दिल्ली, 3 फरवरी, 2014

का०आ० 636.—औद्योगिक विवाद अधिनियम, 1947 का 14 की धारा 17 के अनुसरण में केन्द्रीय सरकार कोटक महिन्दरा बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक

अधिकरण दिल्ली के पंचाट (संदर्भ संख्या 113/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03/02/2014 को प्राप्त हुआ था।

[सं० एल-12011/53/2011-आईआर(बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 3rd February, 2014

S.O. 636.—In pursuance Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 113/2011) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, No. II, Delhi as shown in the Annexure, in the industrial dispute between the management of Kotak Mahindra Bank and their workmen, received by the Central Government on 03/02/2014.

[No.-L-12011/53/2011-IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT-II KARKARDOOMA, DELHI

Present:—Shri Harbansh Kumar Saxena

ID No. 113/2011

Sh. Shashi Bhushan Chaudhary

Versus

Kotak Mahindra Bank

NO DISPUTE AWARD

The Central Government in the Ministry of Labour *vide* notification No. L-12011/53/2011-[(IR(B-1))] dated 01.12.2011 referred the following industrial Dispute to this tribunal for the adjudication:—

"Whether the action of the management of Kotak Mahindra Bank Ltd., New Delhi and Chekmet Services pvt. Ltd. in terminating the services of Shri Shashi Bhushan Choudhary S/o. Late Shri Rama Nand Choudhry, Ex-Guards, *w.e.f.* 23.02.2010, is legal and justified? To what relief the workman is entitled?"

On 19.12.2011 reference was received in this tribunal. Which was register as I.D. No. 113/2011 and claimant was called upon the file claim statement within fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

After service of notice workman/claimant Sh. Shashi Bhushan Choudhry not filed claim statement but management in response to reference filed response wherein it mentioned as follows:—

Subject:—Reference ID. No.-113/2011

Dear Sir,

Honorably, we state further with reference to above case between Shri Shashi Bhushan Choudhary Vs. M/s. Checkmate Services Pvt. Ltd. *vide* award dated 23.06.2011 reference No. ID. 17/2011 that

1. We had reinstated the services of Sh. Shashi Bhushan Chaudhary through the posting order dated 25.06.2011 at Indus Ware House, Delhi. *Vide* the reference— (Annexure 1).

2. The company had paid the backwages at 20% of the minimum wages through A/c Payee Cheque on dated 21/11/2011 for Rs. 17696 (Annexure-2) and the said workman had received on Dated 30.11.2011 (Annexure-3).

3. That there was no dispute further between workman & management and the said workman had performed duty & paid accordingly during that period.

4. That Shri Shashi Bhushan Chaudhary had worked with as till April 2012 and his payments are made to his bank account *vide* the payslip/wageshop 7 July'11 to April 2012 (Annexure-4).

5. That the said workman has not filed submitted any statement of claim within the stipulated period as directed nor he wants to be party of this case by not coming for hearing on dates.

Prayer

It is prayed at your good self that the said case be disposed off considering above facts and evidence.

For Checkmate Service Pvt. Ltd.

D. K. Samal

DGM-Human Resources.

Following Annexure No.-I Posting Letter.

Annexure No.-2 Cheque of ICICI Bank in favour of Workman Sh. Shashi Bhushan Chaudhary for an amount of Rs. 17696.

Annexure No.-3 Cash Voucher dated 20.09.2011 for an amount of Rs. 17696.

Annexure-4 Containing wages slip since July, 2011 to April, 2012 as well as photocopy of Award dated 23.06.2011 passed by Dr. R. K. Yadav, P.O. CGIT-No. 1, Karkardooma Court Complex, Delhi.

ID.No. 17/2011 Sh. Shashi Bhushan Chaudhary Vs. The Manager M/s. Checkmet Services Pvt. Ltd., 58/61 Vashishtha Park, Sagarpur, New Delhi-110045 and others.

In these circumstances there remains no dispute between Claimant/Workman & Respondent No. 1 and No. 2.

Had it been workman/Claimant had filed Claim Statement, Rejoinder etc. and come forward to proceed further.

In these circumstances it is a fit case for passing No Dispute Award.

Reference in decided in favour of Management and Against Workman.

No Dispute Award is accordingly passed.

Dated : 3/1/2014

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 3 फरवरी, 2014

का०आ० 637.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी सी सी एल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं० 1, धनबाद के पंचाट (संदर्भ संख्या 36 का 2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03/02/2014 को प्राप्त हुआ था।

[सं० एल-20012/79/2008-आईआर (सीएम-1)]
एम० के० सिंह, अनुभाग अधिकारी

New Delhi, the 3rd February, 2014

S.O. 637.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 36/2010) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure, in the industrial dispute between the management of M/s. BCCL, and their workmen, received by the Central Government on 03/02/2014.

[No. L-20012/79/2008-IR(CM-I)]
M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO.1), DHANBAD

IN THE MATTER OF A REFERENCE U/S 10(1) (D)(2A)
OF I.D. ACT, 1947

Ref. No. 36 of 2010

Employers in relation to the management of Govindpur Colliery, M/s. BCCL

AND

Their workmen.

Present:—Shri Ranjan Kumar Saran,
Presiding Officer

Appearances:

For the Employers : Sri D. K. Verma, Advocate

For the Workman :- Shri R. R. Ram, Rep.

State : Jharkhand.

Industry : Coal

Dated 10/01/2014

AWARD

By Order No. L-20012/79/2008-IR-(C-I), dated 24/05/2010, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

"Whether the action of the management of Govindpur Colliery of M/s. BCCL in dismissing Sri Durga Manjhi M/Loader from the services of the company vide order dated 14/16.10.1999 is Legal & Justified? To what relief the claimant workman entitled to?"

2. The case is received from the Ministry of Labour on 08.06.2010. After receipt of reference, both parties are noticed, the workman files their written statement on 23.06.2010. And the management files their written statement-cum-rejoinder on 26.11.2012. The point involved in the reference is that the workman has been dismissed from his services on ground of absenteeism.

3. During preliminary hearing it is revealed that this case is dismissal of workman for long absence on duty. It is found that he has already out of service for 14 years. It is felt to give another chance to the workman to serve.

4. Considering the facts and circumstances of this case, I hold that he be taken into job as a fresh employee. Therefore the question of back wages does not arise at all. Communicated.

This is my award.

R. K. SARAN, Presiding Officer

नई दिल्ली, 3 फरवरी, 2014

कांआ 638.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बीसीसीएल के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं० 2, धनबाद के पंचाट (संदर्भ संख्या 83 का 1998) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03/02/2014 को प्राप्त हुआ था।

[सं० एल-20012/72/1997-आई आर (सी एम-1)]
एम० के० सिंह, अनुभाग अधिकारी

New Delhi, the 3rd February, 2014

S.O. 638.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the Award (Ref. No. 83/1998) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure, in the industrial dispute between the management of M/s. BCCL and their workmen, received by the Central Government on 03/02/2014.

[No. L-20012/72/1997-IR(CM-I)]
M. K. SINGH, Section Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL (NO. 2) AT
DHANBAD**

Present: Shri Kishori Ram, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947.

Reference No. 83 of 1998

Parties:

Employer in relation to the management of Tetulmari Colliery of M/s. BCCL and their workman.

Appearances:

On behalf of the Workman : Mr. N. G. Arun, Ld. Adv.

On behalf of the Management : Mr. D. K. Verma, Ld. Adv.

State: Jharkhand

Industry : Coal

Dated, Dhanbad, the 5th March, 2013

AWARD

The Government of India, Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication *vide* their order No. L-20012/72/97-IR (Coal-I) dt. 24.03.1998.

SCHEDULE

"Whether action of the management of Tetulmari Colliery of M/s. BCCL in dismissing Shri Dil Mohammad Mia, Miner Loader in absentia is justified? If not, so to what relief the workman is entitled?"

2. Mr. N. G. Arun, the Advocate/Representative for the Union-R.C.M.S. and Mr. D. K. Verma, the Ld. Advocate for the Management are present. No. Management witness for evidence of the management on merits produced, though a joint petition under the signatures of the Representative for both the parties along with the Memorandum of Settlement in Form H. (Rule 58) arrived at between the management of Sijua Area and the workman and his representative has been filed under the signatures of the Representative of the management and of the Union as well as the workman concerned (without any date), and moved by the Representative concerned that both the parties have amicably settled the Industrial Dispute as per the terms of their settlement as stated in their Form H; and accordingly it has been solicited for passing a Settlement Award.

The present reference relates to the issue about the dismissal of workman Dil Mohammad Mia, the M/Loader

in absentia. While the case was pending for the evidence of the management on merits, the Joint petition of both the parties duly signed by their representatives has been filed for the settlement as per the Memorandum of their Settlement accordingly. The term of their Settlement between both the parties are as such:

1. That the management has agreed to reinstate Sri Dil Mohammad Mia as M/Loader subject to his medical fitness.

2. That the concerned workman has agreed that he will not claim any back wages from the date of his dismissal to the date of his reinstatement.

3. That it has been agreed that the period of his idleness shall be treated as dies-non and shall be treated as in continuous service for the purpose of payment of gratuity only.

4. That the workman concerned will give assurance that he will not commit the similar misconduct in future.

5. That both the parties agreed to file memorandum of settlement before the Central Government Industrial Tribunal No. 2, Dhanbad with a prayer to pass an Award in terms of settlement Award.

6. That this settlement resolves the entire dispute once for all.

The settlement between both the parties today appears to be quite amicable and wilful to bind and abide themselves by the terms & conditions arrived at by both the parties, leaving no room for determination of the Schedule Issue and relief in this forum. Accordingly, the Settlement Award is passed. The terms and conditions of the Settlement to form the part of the Award. Therefore it is hereby ordered:

Let there be a settlement Award and the same is passed. The Memorandum of Settlement shall form the part of this Award. The copies of the Settlement Award be forwarded to the Government of India, Ministry of Labour, New Delhi for information and needful. The Reference is accordingly disposed of.

KISHORI RAM, Presiding Officer

FORM-H

(See Rule-58)

MEMORANDUM OF SETTLEMENT ARRIVED AT
BETWEEN THE MANAGEMENT OF SIJUA AREA
AND THE WORKMAN REPRESENTED BY
SRIN. G. ARUN, TREASURER, RASTRIYA
COLLIERY MAZDOOR SANGH

Short Recital of the Case

The workman Shri Dill Mohammad Mia, Minor Loader of Tetulmari Colliery was dismissed from the services of the company *w.e.f.* 30.08.1988. The Rastriya Colliery Mazdoor Sangh raised an Industrial dispute before ALC© which was referred to Central Government Industrial Tribunal No. 2, Dhanbad for adjudication *vide* Notification No. L-20012/72/97-IR-Coal-I dated 24.03.1998 with following schedule:

"Whether action of the management of Tetulmari Colliery of BCCL in dismissing Shri Dil Mohammad Mia, Miner Loader in absentia is justified? If not, to what Relief the workman is entitled."

The Hon'ble Tribunal Registered the said reference as Ref. Case No. 83 of 1988. That during the hearing of the case the workmen concerned submitted application before the Tribunal for settlement of the dispute amicably on the following terms of settlement:

Terms of Settlement

1. That the management has agreed to reinstate Shri Dil Mohammad Mia as *Miner Loader* subject to his medical fitness.

2. That the concerned workman has agreed that he will not claim any back wages from the date of his dismissal to the date of his reinstatement.

3. That it has been agreed that the period of his idleness shall be treated as dies-non and shall be treated as in continuous service for the purpose of payment of gratuity only.

4. That the workmen concerned will give assurance that he will not commit the similar misconduct in future.

5. That both the parties agreed to file memorandum of settlement before the Central Government Industrial Tribunal No. 2, Dhanbad with a prayer to pass an Award in terms of Settlement Award.

6. That this settlement resolves the entire dispute once for all.

REPRESENTING

MANAGEMENT

GENERAL MANAGER

SIJUA AREA

PROJECT OFFICER

TETULMARI COLLIERY

CHIEF MANAGER (PERS). (DIL MOHAMMAD MIA)

SIJUA AREA

SR. MANAGER (PERS.)/IR

SIJUA AREA

Witnesses:

REPRESENTING

UNION/WORKMAN

(NGARUN)

TREASURER, RCMS UNION

नई दिल्ली, 3 फरवरी, 2014

का०आ० 639.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी सी सी एल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं० 1, धनबाद के पंचाट (संदर्भ संख्या 12/1992) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03/02/2014 को प्राप्त हुआ था।

[सं० एल-20012/159/1991-आई आर (सीएम-1)]

एम० के० सिंह, अनुभाग अधिकारी

New Delhi, the 3rd February 2014

S.O. 639.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 12/1992 of the Cent.Govt.Indus.Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure, in the industrial dispute between the management of M/s. BCCL, and their workmen, received by the Central Government on 03/02/2014

[No. L-20012/159/1991-IR(CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL No.1, DHANBAD

Reference No. 12/1992

In the matter of reference U/s 10(1) (d) (2A) of
I.D. Act, 1947.

Employer in relation to the management of Kenduadih
Colliery M/s. BCCL

AND

Their Workmen

Present : Sri R. K. Saran, Presiding Officer

Appearances:

For the Employers: None

For the Workman: None.

State : Jharkhand

Industry : Coal

Dated 13/11/2013

AWARD

By order No. L-20012/159/91/IR (C-I) Nil the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

"Whether Shri Ramadhar and 65 others (Copy enclose) contractor workers are workmen of Kenduadih colliery of M/s Bharat Coking Coal Ltd. and whether the demand that these persons be regularized in the services of the said management is justified? If so to what relief are these persons entitled?"

2. After receipt of the reference, both parties are noticed. But appearing for certain dates none appears subsequently. Case remain pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed Communicate.

R. K. SARAN, Presiding Officer

List of the Workers of Kenduadih (Khaira) Workshop who were terminated from their services in 1976 after closure of the Workshop

1. Sri Ramadhar
Kenduadih Colliery,
P.O. Kusunda (Dhanbad)
2. Sri Ram Autar Ram,
S/o. Sri Bitul Ram,
Village Kendi Nagar,
P.O. Kanha Chatti,
P.S. Chatra
Dist. Hazaribagh.
3. Sri Ram Charan Singh Yadav,
S/o. Sri Har Nandan Singh Yadav,
Vill. Bahdura,
P.O. Samanpur, P.S. Nandgunj,
Distt. Gajipur
4. Sri Kanhaiya Prasad Singh,
S/o. Sri Bhagwan Singh,
Vill. Chanwath,
P.O. Kaisath, Dist. Bhojpur.
5. Sri Ajoy Shankar Bahadur,
S/o. Sri Tara Shankar Bahadur,
Vill Nutandih,
P.O. Jagjiwan Nagar, Dhanbad.
6. Sri Radhey Shyan Paswan,
S/o. Sri Somar Paswan,
Vill. Raundi, P.O. Karki,
P.S. Ariyari
Dist. Munghyr.
7. Sri Bilash Rajbhar,
S/o Sri Nanho Rajbhar,
Putkee Loyabad Centre,
P.O. Loyabad, P.S. Putkee,
Dist. Dhanbad.

8. Sri Udai Bhan Yadav,
S/o. Sri Ram Karan Yadav,
Vill. Ajourwa,
P.O. Dumduma,
P.S. Handi,
Dist. Allahabad.
9. Shri Arbind Kumar Upadhyay,
S/o. Sri Ram Najar Upadhyay,
Vill. Osanow,
P.O. Caanow,
P.S. Tarka, Dist. Rohtas.
10. Sri Sanjoy Kumar Sinha,
S/o. Shri Balkrishna Prasad,
At Bhuli Nagar, Qr. No. B/22,
Dist. Dhanbad.
11. Sri Raj Kumar Sinha
S/o. Sri R.K. Prasad,
At & P.O. Jagjiwan Nagar,
Dist. Dhanbad.
12. Sri Dipak Chandra Paul,
S/o. Late Mahadeb Chandra Paul,
Vill. Kenduadih Basti,
P.O. Kusunda, Dist. Dhanbad.
13. Sri Upendra Yadav,
S/o. Sri Ram Das Yadav,
Vill. Kaua Khap,
P.O. bhadwa, P.S. Rafigunj,
Dist. Aurangabad (Bihar)
14. Sri Subodh Paswan,
S/o. Sri Keshava Paswan,
Vill. Noni, P.O. Noni,
P.S. Chandradih,
Dist. Munghyr.
15. Sri Bechu Rajbhar,
S/o. Sri Tilak Rajbhar,
Putkee Loyabad Centre,
P.S. Putkee, P.O. Loyabad,
Dist. Dhanbad.
16. Sri Ashok Kumar Yadav,
S/o. Sri Malapati Yadav,
Vill. Bujuruk,
P.O. Saidabad,
Dist. Allahabad.
17. Sri Govind Yadav,
S/o. Sri Prayag Yadav,
Kendwadih Colliery,
P.O. Kusunda, Dist. Dhanbad.
18. Sri Bijoy Kumar Verma,
S/o. Sri Tarni Prasad Verma,
Vill. Matkuria,
P.O. Dhanbad, Dist. Dhanbad.
19. Sri Surendra Paswan,
S/o. Sri Manrup Paswan,
Vill. Tajpur, P.O. Tilkai,
Dist. Jahanabad.
20. Sri Balmiki Singh,
C/o. Bhola Singh,
South Baliphari Colliery,
P.O. Kusunda, Dist. Dhanbad.
21. Sri Karu Yadav,
S/o. Sri Gopal Yadav,
Vill. Uprawa,
P.O. Uprawa,
P.S. Bihar Sarif,
Dist. Nalanda,
22. Sri Balmiki Paswan,
Kendwadih Colliery,
P.O. Kusunda P.S. Kendwadih,
Dist. Dhanbad.
23. Sri Ram Keshwar Mistry,
S.O. Sri Brahamdeo Mistry,
Vill. & P.O. Bank Basar,
P.S. Sanke Bazar,
Dist. Gaya.
24. Sri Surendra Mistry,
S/o. Late Parmeshwar Mistry,
Vill. Turkadih,
P.O. Lesligunj,
P.S. Lesligunj,
Dist. Palamu.
25. Sri Nandlal Sharma
S/o. Sri Mahadeo Mistry,
Vill. Ghurwa,
P.O. Poldih Jagdishpur,
P.S. Husanabad, dist. Palamu.
26. Sri Mahadeo Lal,
S/o. late Barati Lal,
Vill. Chute,
P.O. Chute, P.S. Gomia,
Dist. Giridih.
27. Sri Sanjay Kumar Sinha,
S/o. Sri Chandrika Lal,
Mohalla New Area Pipar Panti,
P.S. Kotwali,
P.O. Gaya (R.S.) Dist. Gaya.
28. Sri Rajendra yadav,
S/o. Sri Ram Baldeo Yadav,
Vill. Pipari,
P.O. Prithabipur-via-Handia,
Dist. Allahabad.

29. Sri Chhotelal Passi,
S/o. Sri Sukhu Passi,
Vill. Aura, P.O. Baraut,
P.S. Handia, Dist. Allahabad.
30. Sri Nand Lal Yadav,
S/o. Sri Basdeo Yadav,
Vill. Kubi, P.O. Urij *via* Bicl
P.S. Gopigunj, Dist. Banaras.
31. Sri Balgovind Thakur
S/o. Late & Jagarnath Thakur,
Vill. Basupur, P.O. Handia,
P.S. Handia, Dist. Allahabad.
32. Sri Ram Bilas Pasi,
S/o. Sri Faudar Pasi,
Vill. Balihari Colliery (S.B.S.)
P.O. Kusunda, Dist. Dhanbad.
33. Sri Mahendra Ram,
S/o. Late Sarjug Ram,
Vill. Bardan Khar,
P.O. Salonja, P.S. Atalsi,
Dist. Munghyr.
34. Sri Sumiran Yadav,
S/o. Sri Nath Yadav,
Vill. Muflisipur Nawada,
P.O. Muflisipur,
Dist. Jonpur (U.P.).
35. Sri Satrugan Prasad Bhujan,
S/o. Kamdeo Bhujan,
Vill. Bania, P.O. Nagmatia,
P.S. Madanpur,
Dist. Aurangabad (Bihar).
36. Sri Mahendra Pratap,
S/o. Ram Ugrah Rai,
Vill. Naharchak,
P.S. Jahanagunj, P.O. Sevata,
Dist. Azamgarh (U.P.).
37. Sri Sudhir Kumar,
Kendua Pull, P.O. Kusunda,
Dist. Dhanbad.
38. Sri Rajendra Prasad Swarnkar
S/o. Budhan Swarnkar,
Vill. Bishnugarh,
P.O. & P.S. Bishnugarh,
Dist. Hazaribagh.
39. Sri Jamir Alam,
S/o. Ismail Mian,
Kendwadih (Khoira) Colliery,
P.O. Kusunda Dist. Dhanbad.
40. Sri Jai Prakash Mistry,
S/o. Sri Arjun Mistry,
Vill. Mohudi, P.O. Brindaban,
Dist. Hazaribagh.
41. Sri Dhaneshwar Yadav,
S/o. Sri Sukh Ram Yadav,
Palihari Colliery (K.B.Sec.),
P.S. Putkee, Dist. Dhanbad.
42. Sri raj Keshwar Singh,
S/o. Late Randeo Singh,
Vill. Bahera,
P.O. Poldih Jagdishpur,
P.S. Husanabad, Dist. Palamu.
43. Sri Arbind Prasad,
S/o. Late Ram Sewak Prasad,
Vill. Uchauli, P.O. Rengania,
Dist. Aurangabad (Bihar).
44. Sri Satendra Singh,
S/o. Sri Dwarka Singh,
Vill. Bherhia, P.O. Kanbehari
P.O. Aurangabad (Bihar)
45. Sri Arbind Kumar Sinha,
S/o. Sri Kedar Sinha,
Vill. Bania, P.O. Erki *via* Deo,
Dist. Aurangabad (Bihar)
46. Sri Dilip Kumar Sinha,
Kendua Pull, P.O. Kusunda,
Dist. Dhanbad.
47. Sri Ajit Kumar Verma,
S/o. Sri Bipin Bihari Verma,
Mohalla Gandhi Path Lane,
P.O. & P.S. Danapur Cantt,
Dist. Patna.
48. Sri Pram Kumar Sinha,
S/o. Sri R.K. Prasad,
At & P.O. Jagjiwan Nagar,
Dist. Dhanbad.
49. Sri Awadhesh Prasad,
Kendwadih Colliery,
P.O. Kusunda, Dist. Dhanbad.
50. Sri Binod Kumar Mishra,
S/o. Sri Ramyad Mishra,
Vill. Saraiya, P.O. Malhara
P.S. Deo, Dist. Aurangabad (Bihar).
51. Sri Pradip Kumar Ambastha,
S/o. Late Raghubar Prasad,
Vill. & P.O. Darwan *via* Goh,
Dist. Aurangabad (Bihar).

52. Sri Jai Prakash,
S/o. Sri Chakradhar Lal,
Kendwadih Basti No. 5,
P.O. Kusunda, Dist. Dhanbad.
53. Sri Ram Sewak Ram,
S/o. Late Lilo Ram,
Vill. Ganga Ahar
P.O. Pudibara, P.S. Choparan,
Dist. Hazaribagh.
54. Sri Sheo Kumar Yadav,
S/o. Sri Pun Yadav,
Vill. Lalpur Bara, P.O. Dangara,
P.S. Mahanpur, Dist. Gaya.
55. Sri Ramchandra Yadav,
S/o. Ram Prasad Yadav,
Vill. Padumchak, P.O. Barachati,
P.S. Barachati, Dist. Gaya.
56. Sri Anup Kumar Sinha,
S/o. Sri Basdeo Nandan Prasad,
Red House Compound
West Charch Road,
Gaya.
57. Sri Muna Saw,
S/o. Ramchandra Saw,
Vill. Repura, P.O. Daudnagar,
Dist. Aurangabad (Bihar).
58. Sri Rameshwar Saw,
S/o. Sri Mahadeo Saw,
P.O. Papaur Via Siwan,
P.S. Pach Rukhi, Dist. Siwan.
59. Sri Pashupati Saw
S/o. Uma Shankar Saw,
Vill. Barhaka Gano,
P.O. Papaur via Siwan,
P.O. Pachrukhi, Dist. Siwan.
60. Sri Krishnadeo Yadav,
S/o. Sri Banwari Yadav,
Vill. Garhala,
P.O. Basahi, R.S. Karchhana,
Dist. Allahabad.
61. Sri Rabo Ram,
S/o. Sri Munshi Ram,
Vill. Aijhi, P.O. Katari,
P.S. Korina, Dist. Munghyr.
62. Sri Bhusan Prasad,
S/o. Late Kameshwar Prasad,
Bhuli Township, Dist. Dhanbad.
63. Sri Pradip Kumar,
S/o. Sri Girendra Prasad,
Vill. Kalayanpur,

P.O. Bedoli, P.S. Pratapur,
Dist. Hazaribagh.

64. Sri Sheo Nandan Ram,
S/o. Sri Balchand Ram,
Vill. Kandi Nagar,
P.O. Kalhaiya, P.S. Chatra,
Dist. Hazaribagh.

65. Sri Sambhu Singh,
S/o. Sri Tribeni Singh,
Vill. Sultanpur,
P.O. Sultanpur,
P.S. Mahadi Nagar,
Dist. Samastipur.

66. Sri Lalan Singh,
S/o. Ghul Singh,
Vill. Araila,
P.O. Manu Dihari,
P.S. Jagdishpur,
Dist. Bhojpur.

नई दिल्ली, 3 फरवरी, 2014

कांआ० 640.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एअरोफ्लोट रशियन एअरलाईन्स के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं० 1, नई दिल्ली के पंचाट (संदर्भ संख्या 47 of 2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03/02/2014 को प्राप्त हुआ था।

[सं० एल-11012/4/2008-आई आर (सीएम-1)]

एम० के० सिंह, अनुभाग अधिकारी

New Delhi, the 3rd February, 2014

S.O. 640.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award Ref. 47/2009 of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 1, New Delhi as shown in the Annexure, in the industrial dispute between the management of M/s. Aeroflot Russian Airlines, and their workmen, received by the Central Government on 03/02/2014.

[No. L-11012/4/2008-IR (CM-I)]

M.K. SINGH, Section Officer

ANNEXURE

**BEFORE DR. R.K. YADAV, PRESIDING OFFICER,
CENTRAL GOVT. INDUSTRIAL TRIBUNAL No. 1,
KARKARDOOMA COURTS COMPLEX, DELHI**

I.D. No. 47/2009

Shri Suresh Kumar & Ors. through
The President

Aeroflot Employees Union,
C/o Shri Bir Singh, V.P.O. Goyala Khurde,
P. No. 22, New Delhi-110071.

... Workman

Versus

The General Manager,
M/s. Aeroflot Russian Airlines,
Ground Floor, 15-17, Tolstoy House,
Tolstoy Marg, New Delhi-110001.

... Management

AWARD

Self ground handling services at Indira Gandhi International Airport, New Delhi, were undertaken by the Aeroflot Russian International Airlines (hereinafter referred to as the Airlines). The Airlines had employed a few persons for that purpose. Director General, Civil Aviation, *vide* circular dated 28.09.2007, took a decision to enlist agencies which can undertake ground handling services at various aerodromes. In anticipation of that decision, a press release was made on 01.02.2007 by Press Information Bureau, Government of India, New Delhi, informing that approval has been granted by the Ministry of Civil Aviation, Government of India, New Delhi regarding ground handling policy at metropolitan airports, including IGI Airport, New Delhi. It was further detailed in the press release that ground handling services at metropolitan airports would be carried out by respective Airport Operators itself by its joint venture and the airlines, involved in ground handling, will not be permitted to undertake self handling with effect from 01.01.2009. This press release made the employees of the Airlines panicky of their future, since on the date of the press release, the Airlines was doing self handling at the IGI Airport, New Delhi. They began approaching other agencies for employment and also informed the Airlines about their decision to take employment elsewhere. 22 employees, including operators of the Airlines, tendered their resignation in August 2007. Since ramp ground handling service calls for team work in a fixed time frame, it could not be engaged in piece-meal. Hence, the Airlines approached Combata Civil Aviation Pvt. Ltd. to provide them complete ground handling services.

2. Aggrieved by the said Act, Aeroflot Employees Union (in short the union) sent a demand letter dated 02.05.2005. Since the demand was not acceded to, the union was forced to file claim statement before the Conciliation Officer. Since the Airlines contested the claim preferred by the union, conciliation proceedings ended into a failure. On consideration of failure report submitted by the Conciliation Officer, the appropriate Government referred the dispute to this Tribunal for adjudication, *vide* order No. L-11012/11/2006-IR (CM-I), New Delhi dated 01.01.2006, wherein issues relating to demand of proper pay scales and other facilities under well defined service conditions

applicable to the employees of the Airlines, doing ground handling jobs, were sent for adjudication.

3. During pendency of the said dispute for adjudication, S/Shri Rishi Pal, Suresh Kumar, Sunil Kumar Rathi and Jagpal were charge sheeted on 28.03.2007 alleging that they had reported to a news channel that there was great security threat at IGI Airport, New Delhi due to certain actions of the Airlines. It was also reported that they were not aware for whom they were working from last 12 years, even though they were employees of the Airlines. Since replies, submitted by the aforesaid employees, were found to be not satisfactory, a domestic enquiry was constituted. The Enquiry Officer submitted his report to the Airlines, who dismissed them from its services *vide* order dated 14.08.2007.

4. When report of the Enquiry Officer was under consideration with the Airlines, the union moved an application before this Tribunal seeking directions to restrain the Airlines from changing service conditions of members of the union, besides seeking status of protected employees in terms of Sub-section (4) of section 33 of the Industrial Disputes Act, 1947 (in short the Act) read with rule 61 of the Industrial Disputes (Central) Rules 1957 (in short the Rules). The said application was disposed of by this Tribunal *vide* order dated 13.8.2007, commanding the Airlines to comply with the provisions of section 33 of the Act, in case it opts to discharge or dismiss the charge sheeted employees.

5. The Airlines dismissed the employees referred above. Irked by the above act, the union raised an industrial dispute before the Conciliation Officer by way of filing a claim statement. Conciliation proceedings resulted into a failure. Conciliation Officer submitted his report to the appropriate Government, as contemplated by Sub-section (4) of section 12 of the Act. On consideration of the said failure report, the appropriate Government referred the dispute to this Tribunal, *vide* order No. L-110012/4/2008-IR(CM-I), New Delhi dated 14th of August, 2008 with following terms:

"(i) Whether the action of the management of Russian International Airlines, New Delhi, in dismissing the services of S/Shri Suresh Kumar, Jagpal, Sunil Kumar Rathi and Rishi Pal is justified and legal? (ii) To what reliefs are the concerned workmen entitled?"

6. Claim statement was filed by the union pleading that despite orders passed by the Tribunal, the Airlines terminated services of two office bearers and one ordinary member of the union, who were protected employees. *Vide* letter dated 13.12.2006, the union sought status of protected workmen from the Airlines. However, the Airlines failed to respond, though there was an obligation on it to reply the said communication within a period of 15 days. The union was left with no option but to approach the Assistant

Labour Commissioner seeking declaration of protected workmen. Being office bearer of the union, they were protected workmen. The Airlines had committed an unfair labour practice in not declaring them as protected employees. Their services were terminated in violation of the provisions of Sub-section (3) of section 33 of the Act, hence approval applications moved by the Airlines are irrelevant. The Airlines acted in utter disregard to the order dated 13.8.2007 passed by the Tribunal. It was projected that this Tribunal may not approve the illegal action taken by the Airlines, dismissing the aforesaid employees from their services and to reinstate them in service with continuity, full back wages, and consequential benefits.

7. The Airlines demurred the claim pleading that the employees, referred above, had committed serious acts of misconduct, hence they were charge sheeted *vide* charge sheet dated 5th of April, 2007. Explanations submitted by them were found to be unsatisfactory, hence a decision was taken to hold domestic enquiry. Shri Jitesh Pandey, an independent and impartial person, was appointed as Enquiry Officer, *vide* letter dated 4.5.2007. Shri Pandey conducted the enquiry in accordance with the principles of natural justice and submitted his report dated 1st of August 2007 to the Airlines. Since charges stood proved against the aforesaid employees, they were served with a show cause notice dated 4.8.2007, alongwith the copy of the enquiry report, calling them to submit their explanations as to why they should not be dismissed from service. Explanation submitted by them were considered and found to be unsatisfactory. The Airlines decided to dismiss their services. Accordingly their services were dismissed *vide* letter dated 14.8.2007. Since an industrial dispute was pending before this Tribunal, approval applications as contemplated by clause (b) of Sub-section (2) of section 33 of the Act, were moved and simultaneously one month's salary was sent to them by money order. It has been disputed that the aforesaid employees were protected workmen. The Airlines claimed that letter dated 13.12.06 and its postal receipts were manipulated documents. No such letter was ever received by Airlines, hence there was no question of its reply. It has been projected that when ramp ground handling services were given to Combata Civil Aviation Pvt. Ltd., the Airlines had to retrench 29 employees on 14th of September, 2007. Since the Airlines is not doing ramp ground handling services, claim of the union, for reinstatement of services of the aforesaid employees, had become infructuous. The Airlines projected that the provisions of clause (b) of Sub-section (2) of section 33 of the Act are applicable to the controversy under reference, hence approval applications were moved. The dismissed employees were never declared as protected employees, hence claim of the union that provisions of Sub-section (3) of section 33 of the Act are attracted, is uncalled for. It has been agitated that the dispute referred by the Government may be dismissed and action of dismissal of the aforesaid employees may be approved.

8. On perusal of pleadings, following issues were settled:

1. Whether the enquiry conducted by the management was just, fair and proper?
2. As in terms of reference.
3. Relief.

9. Issue No. 1 was treated as preliminary issue.

10. To discharge onus resting on it, Airlines examined Shri Jitesh Pandey, the Enquiry Officer. The union brought Shri Suresh Kumar in the witness box to rebut facts unfolded by Shri Pandey. No other witness was examined by either of the parties on the preliminary issue.

11. On hearing Shri M.A. Niazi, authorized representative on behalf of the claimant union, and Shri M.K. Dwivedi, Authorized representative for the Airlines, consideration of evidence adduced by the parties and on appreciation of submissions made at the bar, preliminary issue was answered in favour of the claimant union and against the Airlines, *vide* order dated 12.11.2010.

12. Shri Anil Chaudhary was examined to prove misconduct of the claimants. Shri Suresh Kumar entered the witness box again to rebut facts testified by Shri Chaudhary.

13. Arguments were heard at the bar. Shri M.A. Niazi, authorized representative, advanced arguments on behalf of the claimant union, but in part. Case was adjourned for further arguments. On adjourned date, the authorized representative was changed on behalf of the claimant union. Thereafter, several adjournments were granted to the claimant union to advance arguments. However none came forward to advance arguments on behalf of the claimant union. When proceedings were abandoned on behalf of the claimant union, Shri M.K. Dwivedi, authorized representative of the Airlines, was called upon to advance arguments. He raised submissions on behalf of the Airlines. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:—

Issue No. 2

14. In affidavit Ex. MW2/A, tendered as evidence, Shri Anil Chaudhary declares that Shri Suresh Kumar, Shri Jagpal, Shri Sunil Kumar Rathi and Shri Rishipal expressed their view on IBN:7 news channel on 28.03.2007. On the basis of views expressed by them, the aforesaid channel reported on 28.03.2007 that there was great security threat at IGI Airport due to the Airlines. In the news report, aforesaid claimants have clearly stated before the camera that they have been working for the last 12 years, but do not know as to whom they are serving. They were well aware that they were on the rolls of the Airlines, since they were

receiving salaries and other benefits from the Airlines. They deliberately made false statements to the news media. Their statements to the news media is nothing but deliberate and malicious imputation on the Airlines. Based on their baseless and malafide information, it was reported that the Airlines has submitted false affidavit to the Indian Government while it has sub contracted ground handling services to some unknown private agency and there is "benami" settlement between the Airlines and a person by the name of Tony Singh. On the information submitted by the claimants, false and malicious imputation was levelled against the Managing Director of the Airlines. Their conduct is highly deplorable since they were well aware that the information furnished by them was false and baseless, which would tarnish image of the Airlines. Their acts show their unfaithfulness to the establishment. They levelled imputation solely with an intention to harm reputation of the Airlines. Thus they committed serious misconducts detailed as below:

- (i) They intentionally worked against the interest of the establishment for their personal ulterior motive/gains.
- (ii) They showed their unfaithfulness to the establishment and worked contrary to the nature of their duties.
- (iii) Their acts amount to dereliction of their duties.
- (iv) They caused damage and irreparable loss to the reputation and goodwill of the Airlines intentionally and with ulterior motive by making false and baseless allegations against the Airlines in their interview to IBN:7 news channel.

Due to their misconduct, reputation of the Airlines has been badly affected and it has suffered consequences of the said misleading and wrong information telecasted to general public.

15. Shri Chaudhary unfolds that a charge sheet dated 05.04.2007 was issued to the claimants, to which they submitted their replies. Charge sheet served on them is true and correct. Claimants nether took any permission to express their views to the news channel nor they were authorized to do so. On account of their false and baseless allegations, the Airlines lost confidence in them. Even otherwise, there remained no work for them on account of fact that all ground handling work having been transferred to Combata Aviation Pvt. Ltd., following new policy of Government of India. The Airlines had retrenched services of 29 employees with effect from 14.09.2007. Claimants were

concerned with ramp ground handling services. Retrenchment of other employees have been held to be legal and justified by this Tribunal, *vide* award dated 16.09.2010.

16. In his affidavit Ex.WW1/B, tendered as evidence, Shri Suresh Kumar unfolds that he as well as Shri Jagpal were office bearers of the Aeroflot Employees Union and Shri Sunil Kumar Rathi was an ordinary member of the said union. He projects that Shri Jagpal and Shri Sunil Kumar Rathi had not made any reporting. In the reporting, version of Shri Rishi Pal and Shri Suresh find place. He asserts that there was a lot of truth in the news reporting and the Airlines was looking for excuses to get rid of them. They have been victimized by the Airlines. When contents of the news report are scanned, nothing would be noted which could be termed as serious misconduct, justifying their dismissal from service. The Airlines had been projecting different versions to different authorities relating to its ground handling staff and had made arrangement with a company called AFL (Ground Handling) Services, belonging to one Shri Kanwaljeet Singh (Tony Singh). Documents in this regard have been brought over the record. They do not dispute relationship of employer and employee between them and the Airlines. However, they were always harassed when they were not made known before whom they had to address their grievances. Shri Suresh Kumar has been an employee of the Airlines since 1995 while appointment letter was issued in his favour in 1997. Shri Jagpal is also an employee of the Airlines. Shri Arun Sharma and Shri G.V. Sharma were also employees of the Airlines. However, certificates were issued by the company M/s. AFL (Ground Handling) Services projecting them to be its employees. Shri Suresh Kumar asserts that they were not at all responsible for any reporting made to the aforesaid news channel. No misconduct was committed by them. They had been made scapegoats in an internal fight between the Airlines and M/s. AFL (Ground Handling) Services.

17. When facts unfolded by Shri Anil Chaudhary and Shri Suresh Kumar are appreciated, it emerged over the record that the Airlines has four departments, *viz.* B.S.P. Department, Reservation Department, Airport Department and AFL (Ground Handling) Department. Employees are transferred from one department to the other. Appointments are made by the General Manager or under his authority by any Head of Department. When there are various employees in a department, their salaries arfe being disbursed through Head of Department and in other cases, it is being disbursed by the General Manager. In AFL (Ground Handling) Department, salaries are being disbursed by the Head of Department. Claimants were employees of

the Airlines working in AFL (Ground Handling) Department. Shri Suresh Kumar made a candid admission in that regard. Thus, it is apparent over the record that the claimants were employees of the Airlines, working at the relevant time in its AFL (Ground Handling) Department. Shri Kanwaljeet Singh alias Tony Singh was one of the consultants appointed by the Airlines. He used to handle problems relating to loaders/workmen.

18. As unfolded by Shri Chaudhary, claimant deliberately made false statements on IBN:7 news channel, which channel telecasted its report on 28.03.2007. It was reported by the channel that there was great security threat at IGI Airport by the Airlines. Claimant clearly stated before the camera that they have been working from last 12 years, but do not know for whom they were working. Shri Chaudhary proceeds further that knowing fully well that they were on the rolls of the Airlines from whom they were receiving salaries and other statutory benefits, they deliberately made false statements to the news media. On baseless and malafide information furnished by the claimants, the news channel reported that 'the Airlines has submitted false affidavit to the Indian Government or they have sub contracted the ground handling services to some unknown private agency and there is benami settlement between the Airlines and a person by the name of Tony Singh'. On false information furnished by the claimants, malicious imputations were levelled against the Managing Director of the Airlines. Facts unfolded by Shri Chaudhary get reaffirmation from testimony of Shri Suresh Kumar. In his cross examination, he conceded that besides four claimants, there were 7-8 employees of the Airlines who faced the camera. Reporter of the channel talked to four out of above persons. They were present outside the office of the Labour Commissioner, when reporter of the channel talked to them. He declares that they had gone to the office of the Labour Commissioner in January 2007 when the said interview was given. The said report was telecasted by IBN:7 news channel on 28.03.2007. He concedes that when he viewed the report on television, he found various objectionable facts therein. According to him he was not told that information furnished by them would be telecasted. He opted not to question transcript of the telecast made by IBN:7 channel on 28.03.2007, which transcription runs as follows:

"Reporter—On being asked to comment, none of the officials of Aeroflot was willing to face the camera, but our investigation continued. Now the name of Tony Singh appeared. Shri Tony Singh was responsible for everything. He was responsible for the fraudulent activities. Who are the persons

responsible for putting the security of the IGI Airport at stake. Our investigations revealed that it was a person by the name of Tony Singh. He is seen as a remedy for all ills. He is also the legal advisor of the Airport.

It has been confirmed by the ground handling staff that they are working for Aeroflot but on enquiry about their salary and promotion, they were sent to Shri Tony Singh. It was told that they were employees of AFL and not of Aeroflot. He will redress their grievances. The aggrieved claimants have now approached the Conciliation Officer.

Rishipal—I have been working here for the last 12 years but still not aware as to what is AFL.

Suresh Kumar—No appointment letter nor confirmation letter has been issued to us. They were not informed as to where they have to perform duties on the next morning. They are also not aware as to where they will get salary for the month.

Shri S.K. Rathi—Sub-staff tells them that they are employees of AFL. There is no agreement with them. Whatever would be done for them would be done by Shri Tony Singh".

The reporter projected that Aeroflot has given an affidavit stating that ground handling would be done by themselves and the ground handling staff is their own....it is clear that the Russian airline company Aeroflot has either given a false affidavit to the Government of India or the ground handling has been sub-contracted to a benami company, which is being run by Shri Tony Singh. Look at this letter which has been written by the Station Officer to Tony Singh mentioning that ground handling workers are continuously lodging complaints. There have been negotiations in this regard earlier also. Their salaries may be hiked at the earliest.

It is learnt from reliable sources that settlement was going on between corrupt employees of the Airlines and Shri Tony Singh for the last 11 years. However, nothing recorded on papers in respect of the said settlement. Officers of the Airlines and Shri Tony Singh were making huge profits. On account of benami settlement, question mark has been put on security of the airport. Airlines is not aware as to who is appointed in its name. It is also not known to it as to who enters the premises of the airport on identity card issued by it.

It is not the first time that Aeroflot has been pulled up for flouting laws. It is questionable as to how Russian

General Manager, Dr. Igor Ivliev entered India. The manner in which he is running the day to day affairs of an Indian Company has left much to be desired. Dr. Igor Ivliev, General Manager, who came to India on 16.01.2006 on an 11 month employment visa has been converted to business visa.

FRRO has made clear that his person cannot be allowed to remain in the country, but 3 days later, one more report has been filed on his visa. Dr. Igor's *visa* had been converted to employment *visa*. What was the reason for changing decision of the Indian Government. When his stay in India was questionable, how is it possible to obtain a pass to roam in IGI Airport freely and continue to work here. Therefore, it is evident there was certainly something which made them overlook the security of the airport."

Shri Prabhanjan Verma was also interviewed.

"Reporter—How is it that the Russian Airlines been allowed to continue with its nefarious activities and security of the airport put to stake? Isn't the Ministry of Civil Aviation doing anything?

Prabhanjan—It is certainly looking into it. Will the enquiry be done only after the entire facts are out. Prior to our reporting the workers had approached Labour Court. The Government knows that something is wrong somewhere. The way things are going on and the work is being got done through a benami company in a successful way, nothing has come to the forefront. Aeroflot gives an affidavit to the Government that the workers are working for the company. When facts came to light it was found that there is vast difference in the salary and perks of the actual workers of Aeroflot and those working for the benami company, which make the workers of Aeroflot to approach the Conciliation Officer.

Reporter—It is being said that there is a nexus between Aeroflot, Tony Singh and various agencies, due to which the company has been able to carry on its activities.

Prabhanjan—The way in which things are being done, it is obvious that the security agencies have been hoodwinked and definitely there is an understanding between some high level official or Minister due to which they have been favoured. Otherwise it is not possible to break the strict security at the airport.

Reporter—Thank you Prabhanjan for all the information. All in all, there is security threat at the Delhi Airport. The employees of Aeroflot working at

the Delhi Airport are working against all norms with the full knowledge of the Government. In spite of the fact that the matter is under consideration at the Labour Court, there is no restriction from the side of the Government, restraining the activities of Aeroflot".

19. I have viewed contents of CD Ex.MW2/2 personally. When CD was viewed, it came to light that the claimants, namely, Shri Rishi Pal, Shri Suresh Kumar and Shri S.K. Rathi faced the camera and furnished information to the aforesaid news channel. Shri Jagpal was also standing by their side. By his posture, as viewed in CD, it became apparent that he also approved the information given by the above claimants to the news reporter. From contents of CD. Ex.MW2/2, one cannot form an opinion that Shri Jagpal was a silent spectator to the entire melodrama. By his conduct of being present, besides the aforesaid claimants, he made it well known that he was a party to the entire episode.

20. Transcript of contents of telecast made by IBN:7 news channel on 28.03.2003 highlight that Shri Rishi Pal asserts that he was working for last 12 years but not aware as to what AFL was. Shri Suresh Kumar also alleged that neither appointment letter nor confirmation letter was issued to them. They were not informed as to where they would perform duties on next morning. They are also not aware as to whether they would get salary for the month. Shri S.K. Rathi projects that the sub-staff tells them that they are employees of AFL. There is no agreement with them. Whatever would be done for them would be done by Shri Tony Singh. Out of aforesaid facts furnished by the claimants, Reporter could projects that settlement was going on between corrupt employees of the Airlines and Shri Tony Singh for the last 11 years. However, nothing was recorded on papers in respect of the said settlement. Officers of the Airlines and Shri Tony Singh were making huge profits. On account of benami settlement, question mark has been put on security of the airport. The Airlines is not aware as to who is appointed in its name. It is also not known to it as to who entres premises of the airport on identity card issued by it.

21. The above facts bring it to light of the day that the claimants gave interview to the press, without obtaining permission from their employer. The said interview was given by them when Conciliation Officer was seized of the dispute. When Conciliation Officer had taken cognizance of the dispute, either of the parties was not required to take resort to the press, to make situation surcharged. Here in the case, the Airlines projects that the claimants made statements to the press, which were wrong to their own knowledge. They were well aware that they were employees

of the Airlines but claimed before the press that they were not aware of their status in that regard. They question as to who Shri Tony Singh was and expressed apprehensions as to whether their services would continue and they would get wages. Statement/information furnished by them to the press make it apparent that the claimants had shown rebellious conduct against their employer.

22. Question for consideration would be as to whether the above conduct, depicted by the claimants, amounts to misconduct. For an answer, it would be appropriate to know definition of term 'misconduct'. The dictionary meaning of the word 'misconduct' is: "improper behaviour, intentional wrong doing or deliberate violation of a rule of standard of behaviour. 'Misconduct is a transgression of some established and definite rule of action, where no discretion is left except what necessity may demand: it is violation of definite law, a forbidden act and differs from carelessness. It comprises of positive acts and not mere neglect or failure'".

23. Under Indian Penal Code and other special and local laws some acts or omissions are offences for which a person can be punished by the sovereign power of the State. These offences or acts are considered to be prejudicial to the interest of the society in general and, therefore, they are prohibited by law. There are, however, various other organizations such as professional bodies, educational institutions, clubs, corporate etc. and any one who wants to be admitted to such bodies, by being member or otherwise, is also required to act under certain rules and remain subject to certain discipline. If he does anything in violation of rules, regulations, or any law inconsistent with his position as a member of that society, then he is liable to lose advantage and facilities of the association with that society or organization. Any such act is, therefore, generally called misconduct. Primary meaning of the word 'misconduct' is bad management, mis-management and malfeasance or culpable neglect of an official in regard to his office. Both in law and in ordinary parlance, the term misconduct usually implies an act done willfully with a wrong intention and as applied to professional acts, even though such acts are not inherently wrongful, it means also dereliction of or deviation from duty. Even assuming that a particular act is negligence and not misconduct, such a negligence which amounts to dereliction of or deviation from duty cannot be excused. See in re:—Mehboob Alikhan (AIR 1958 AP 116).

24. In *N.M. Roshan Umar Karim & Co.* (AIR 1936 Mad. 508) following three different meaning of the word 'misconduct' were given:

- "(a) Misconduct is not established by proving even culpable negligence. It is something opposed to accident of negligence and is doing of something

which the doer knows to be wrong or which he does recklessly not caring what the result would be.

- (b) Misconduct is distinguished from accident and is not far from negligence—not only gross and culpable negligence and involves that a person misconducts himself when it is wrong conduct on his part, in the existing circumstances to do or to fail or omit to do a particular thing or to persist in the act, failure or omission or acting with carelessness. It is incorrect that a misconduct only refers to acts of gross or culpable negligence and not mere negligence.
- (c) Misconduct does not ordinarily covers acts of negligence. The test of misconduct is not what a reasonable man would have done in the circumstances. It means that servant is guilty of something which was inconsistent with the conduct expected of him by the rules of the company."

Above three meanings were quoted by the Apex Court with approval in *Shiv Nath* (AIR 1965 SC 1666).

25. Whether mere negligence is a misconduct or not will depend upon the nature of negligence and the requirement of care which the employee was obliged to use on the nature of services he was expected to perform. Misconduct could be of three kinds:

- (i) technical misconduct which leaves not trail of indiscipline,
- (ii) misconduct resulting in damage to the employer's property which might be compensated by forfeiture of gratuity or part thereof, and
- (iii) serious misconduct such as acts of violence against the management or other employee or riotous or disorderly behaviour in or near the place of employment, which though not directly causing damage, is conducive to grave indiscipline.

26. In *Ram Singh* (1992 Lab. IC 2391) the Apex Court observed that though the expression "misconduct" is "not capable of precise definition, its dereliction receives its connotation from the context, the delinquency in its performance and its effect on the discipline and the nature of duty. It may involve moral turpitude, it must be improper or wrong behaviour, unlawful behaviour, willful in character, forbidden act, a transgression of established and definite rule of action or code of conduct but not mere error of judgement, carelessness or negligence in performance of duty, the act complained of bears forbidden quality or character. Its ambit has to be construed with reference to

the subject matter and the context wherein the term occurs, regard being had to the scope of the statute and the public purpose it seeks to serve."

27. In industrial law, the word 'misconduct' has acquired a specific connotation. In *Shalimar Rope Works Ltd.* (1953 L.A.C. 584) the Labour Appellate Tribunal laid down the criteria for determination as to whether an act would be misconduct, viz. the act (i) is inconsistent with the fulfillment of the express or implied conditions of service, or (ii) is directly linked with the general relationship of employer and employees, or (iii) has a direct connection with the contentment or comfort of the men at work, or (iv) has a material bearing, on the smooth and efficient working of the concern. If the answer to any of these criteria is in affirmative, the action in question would amount to an act of misconduct. In industrial law, there are two kinds of misconduct, namely; (I) gross or major misconduct which justify punishment of dismissal or discharge, and (II) minor misconduct which do not justify punishment of dismissal or discharge, but may call for lesser punishment. See also *Caltex India Ltd.* [1966 (2) LLJ 137].

28. Resorting to press by the claimants cannot be said to be in consonance with the rules. Their behaviour was contrary to normal or regular pattern of behaviour. In case of their having any grievance, they were under an obligation either to make protest with their employer or to approach authorities under the Act. Instead of acting in consonance with the rules, claimant approached the press and made rebellious statements against their employer. Statements, made by the claimants, raised questions relating to smooth working of the Airlines, its Managing Director and redressal mechanism being adopted therein. Behaviour, depicted by the claimants, had not only jeopardized interest of the Airlines but raised serious concerns about its working pattern. An employee who undermines its employer tends to upset or destroy discipline in the establishment. Therefore, such an act certainly amounts to misconduct within the meaning of industrial arena.

29. Acts which have tendency to overthrow, upset or destroy discipline in an establishment would be termed as acts subversive of discipline. All acts which tend to destroy discipline tantamount to 'acts subversive of discipline, which may include misconduct relating to duty, negligence, going on illegal strikes, go slow, besides riotous and disorderly behaviour. Acts which are subversive of discipline constitute serious misconduct. Press reports made by the claimants, have connection to affairs of the establishment where they were working. False information, submitted by them, were likely to affect smooth relationship between the Airlines on one hand and a group of workmen on the other, besides tendency to disturb discipline and peace in the establishment. Acts, committed by the

claimants subvert discipline in the establishment even though committed outside the work place. Such proposition was laid by the Apex Court in *Dem Dima Tea Estate* [1963 (1) LLJ 250] wherein speech made at a meeting of a workmen, which was inflammatory, was held to undermine discipline of the workmen or incite them to violence or breach of peace. It was held to be a misconduct.

30. Misconduct committed outside premises or precincts of the establishment would enable the employer to deal with the employee departmentally when consequences of such an act manifests itself within the premises of the establishment. When act committed outside the premises or precincts of the establishment, if it had effect of subverting discipline, or good behaviour within the premises or precincts of the establishments will amount to act of misconduct subversive of discipline. Such proposition was laid by the Apex Court in *Moolchandani Electrical & Radio Industries Ltd.* [1975 (1) LLJ 391]. Replying on above proposition of law, it is concluded that misconduct committed by the claimants outside the premises or precincts of the Airlines could be dealt with domestically. As pointed out above, claimants made rebellious statement which were subversive of indiscipline, hence a grave misconducts. In view of above reasons it is concluded that the Airlines has been able to establish misconduct against the claimants.

31. What should be appropriate punishment, which can be awarded to the claimants, is a proposition which would be addressed to by this Tribunal? Right of an employer to inflict punishment of discharge or dismissal is not unfettered. The punishment imposed must commensurate with gravity of the misconduct, proved against the delinquent workman. Prior to enactment of section 11-A of the Industrial Disputes Act, 1947 (in short the Act), it was not open to the industrial adjudicator to vary the order of punishment on finding that the order of dismissal was too severe and was not commiserative with the act of misconduct. In other words, the industrial adjudicator could not interfere with the punishment as it was not required to consider propriety or adequacy of punishment of whether it was excessive or too severe. Apex Court, in this connection, had, however, laid down in *Bengal Bhatdee Coal Company* [1963 (1) LLJ 291] that where order of punishment was shockingly disproportionate with the act of the misconduct which no reasonable employer would impose in like circumstances, that itself would lead to the inference of victimization or unfair labour practice which would vitiate order of dismissal or discharge. But by enacting the provisions of section 11-A of the Act, the Legislature has transferred the discretion of the employer, in imposing punishment, to the industrial adjudicator. It is now the satisfaction of the industrial adjudicator to finally decide the quantum of punishment for proved acts of

misconduct, in cases of discharge or dismissal. If the Tribunal is satisfied that the order of discharge or dismissal is not justified in any circumstances on the facts of a case, it has the power not only to set aside order of punishment and direct reinstatement with back wages, but it has also the power to impose certain conditions as it may deem fit and also to give relief to the workman, including award of lesser punishment in lieu of discharge or dismissal.

32. It is established law that imposing punishment for a proved act of misconduct is a matter for the punishing authority to decide and normally it should not be interfered with by the Industrial Tribunals. The Tribunal is not required to consider the propriety or adequacy of punishment. But where the punishment is shockingly disproportionate, regard being had to the particular conduct and past record, or is such as no reasonable employer would ever impose in like circumstance, the Tribunal may treat the imposition of such punishment as itself showing victimization or unfair labour practice. Law to this effect was laid by the Apex Court in *Hind Construction and Engineering Company Ltd.* [1965 (I) LLJ 462]. Likewise in *Management of the Federation of Indian Chambers of Commerce and Industry* [1971 (II) LLJ 630] the Apex Court ruled that the employer made a mountain out of a mole hill and had blown a trivial matter into one involving loss of prestige and reputation and as such punishment of dismissal was held to be unwarranted. In *Ram Kishan* [1996 (I) LLJ 982] the delinquent employee was dismissed from service for using abusive language against a superior officer. On the facts and in the circumstances of the case, the Apex Court held that the punishment of dismissal was harsh and disproportionate to the gravity of the charge imputed to the delinquent. It was ruled therein, "when abusive language is used by anybody against a superior, it must be understood in the environment in which that person is situated and the circumstances surrounding the even that led to the use of abusive language. No straight-jacket formula could be evolved in adjudicating whether the abusive language in the given circumstances would warrant dismissal from service. Each case has to be considered on its own facts."

33. In *B.M. Patil* [1996 (II) LLJ 536], Justice Mohan Kumar of Karnataka High Court observed that in exercise of discretion, the Disciplinary Authority should not act like a robot and justice should be moulded with humanism and understanding. It has to assess each case on its own merit and each set of facts should be decided with reference to the evidence recording the allegation, which should be basis of the decision. The past conduct of the worker may be a ground for assuming that he might have a propensity to commit the misconduct and to assess the quantum of punishment to be imposed. In that case a conductor of the bus was dismissed from service for causing revenue loss of 50p to the employer by irregular sale of tickets. It was

held that the punishment was too harsh and disproportionate to the act of misconduct.

34. After insertion of section 11-A of the Act, the jurisdiction to interfere with the punishment is there with the Tribunal, who has to see whether punishment imposed by the employer commensurate with the gravity of the act of misconduct. If it comes to the conclusion that the misconduct is proved, it may still hold that the punishment is not justified because misconduct alleged and proved is such as it does not warrant punishment of discharge or dismissal and where necessary, set aside the order of discharge or dismissal and direct reinstatement with or without any terms or conditions as it thinks fit or give any other relief, including the award of lesser punishment, in lieu of discharge or dismissal, as the circumstance of the case may warrant. Reference can be made to a precedent in *Sanatak Singh* (1984 Lab. I.C.817), The discretion to award punishment lesser than the punishment of discharge or dismissal has to be judiciously exercised and the Tribunal can interfere only when it is satisfied that the punishment imposed by the management is highly disproportionate to the decree of the guilt of the workman. Reference can be made to the precedent in *Kachraji Motiji Parmar* (1994 (II) LLJ 332). Thus it is evident that the Tribunal has now jurisdiction and power of substituting its own measure of punishment in place of the managerial wisdom, once it is satisfied that the order of discharge or dismissal is not justified. On facts and in the circumstances of a case, section 11-A of the Act specifically gives two folds powers to the Industrial Tribunal, first is virtually the power of appeal against findings of fact made by the Enquiry Officer in his report with regard to the adequacy of the evidence and the conclusion on facts and secondly of foremost importance, is the power of reappraisal of quantum of punishment.

35. In *Bharat Heavy Electricals Ltd.* (2005 (2) S.C.C. 481) the Apex Court was confronted with the proposition as to whether power available to the Industrial Tribunal under section 11-A of the Act are unlimited. The Court opined that "there is no such thing as unlimited jurisdiction vested with any judicial or quasi judicial forum and unfettered discretion is sworn enemy of the constitutional guarantee against discrimination. An unlimited jurisdiction leads to unreasonableness. No authority, be it administrative or judicial, has any power to exercise the discretion vested in it unless the same is based on justifiable grounds supported by acceptable materials and reasons thereof". The Apex Court relied its judgement in *C.M.C. Hospital Employees Union* (1987 (4) S.C.C. 691) wherein it was held that "section 11-A cannot be considered as conferring an arbitrary power on the Industrial Tribunal or the Labour Court. The power under section 11-A of the Act has to be exercised judiciously and the Industrial Tribunal or Labour Court is expected to interfere with the decision of a management under section 11-A of the Act only when

it is satisfied that the punishment imposed by the management is highly disproportionate to the degree of guilt of the workmen concerned. The Industrial Tribunal or Labour Court has to give reasons for its decision". In *Hombe Gowda Educational Trust* (2006 (1) S.C.C, 430) the Apex Court announced that the Tribunal would not normally interfere with the quantum of punishment imposed by the employer unless an appropriate case is made out therefore.

36. Power to set aside order of discharge or dismissal and grant relief of reinstatement or lesser punishment is not untrammelled power. This power has to be exercised only when Tribunal is satisfied that the order of discharge or dismissal was not justified. This satisfaction of the Tribunal is objective satisfaction and not subjective one. It involves application of the mind by the Tribunal to various circumstances like nature of delinquency committed by the workman, his past conduct, impact of delinquency on employer's business, besides length of service rendered by him. Furthermore, the Tribunal has to consider whether the decision taken by the employer is just or not. Only after taking into consideration these aspects, the Tribunal can upset the punishment imposed by the employer. The quantum of punishment cannot be interfered with without recording specific findings on points referred above. No indulgence is to be granted to a person, who is guilty of grave misconduct like cheating, fraud, misappropriation of employers fund, theft of public property etc. A reference can be made to the precedent in *Bhagirath Mal Rainwa* (1995 (I) LLJ 960).

37. To assess the quantum of punishment for the claimant, facts are again taken note of. At the cost of repetition, it is said that the claimants made a rebellious statement and questioned working pattern of the Airlines. They raised issues about their status of being an employee of the Airlines, knowing fully well themselves to be employees of the Airlines. On the basis of their statements, the reporter put a blot not only on the Airlines but on the status of its Managing Director, An employee who makes rebellious statements against top executive of the Airlines cannot expect his retention in service. Such an employee loses confidence of his employer. In case such an employee is retained in service, discipline would be the first casualty. It is well known that misconduct is contagious. When such gross misconduct is suffered, it would give opportunity to others to behave in the same manner. Work culture, discipline and smooth functioning of the establishment would be put to stake. Taking into consideration all these aspects, I am of the considered opinion that employees like the claimant do not have a right to be dealt with leniently.

38. Whether claimants were victimized for their union activities? Answer lies in the negative. Claimants approached the Conciliation Officer for redressal of their grievances. When they came out of office of the Conciliation

Officer, they approached the press and made derogatory statements against their employer. Their employer had not taken any action to restrain them to pursue their union activities. No evidence has been brought over the record to indicate that the employer took steps to harass or victimize them. In such a situation, I do not find it to be a case to conclude that punishment of dismissal from service was shockingly disproportionate to the misconduct committed by the claimants. No case for interference with the punishment, awarded to the claimants, is made out. Resultantly, it is concluded that punishment of dismissal from service commensurate to the misconduct of the claimants. The issue is, therefore, answered in favour of the Airlines and against the claimants.

Issue No.3

39. Whether the penalty of dismissal would relate back to the date of order of dismissal passed by the Airlines? For an answer, it is expedient to consider the precedents handed down by the Apex Court. In *Ranipur Colliery* [(1959) Supp. 2 SCR 719] the employer conducted a domestic enquiry though defective and passed an order of dismissal and moved the Tribunal for approval of that order. It was ruled therein that if the enquiry is not defective, the Tribunal has only to see whether there was a *prima facie* case for dismissal and whether the employer had come to the bonafide conclusion that the employee was guilty of misconduct. Thereafter on coming to that conclusion that the employer had bonafide come to the conclusion that the employee was guilty, that is, there was no unfair labour practice and no victimization, the Tribunal would grant the approval which would relate back to the date from which the employer had ordered the dismissal. If the enquiry is defective for any reason, the Tribunal would also have to consider for itself on the evidence adduced before it whether the dismissal was justified. However on coming to the conclusion on its own appraisal of evidence adduced before it that the dismissal was justified its approval of the order of dismissal made by the employer on defective enquiry would still relate back to the date when order was made.

40. In *Phulbari Tea Estate* (1960 (I) S.C.R. 32) the domestic enquiry held by the employer culminating in the order of dismissal was found to be invalid, being in gross violation of the rules of natural justice. Even before the Tribunal, the employer did not lead proper evidence to justify the order of dismissal and contended itself by merely producing the statement of certain witnesses recorded during the domestic enquiry and the workman had no opportunity to cross-examine the witnesses before the Tribunal. In the absence of any evidence before it, justifying the dismissal, the Tribunal set aside the order of dismissal and granted compensation in lieu of reinstatement, which order was upheld by the Apex Court. In that case question of relating back of the order of dismissal did not arise.

41. In P.H. Kalyani [1963 (1) LLJ 673] the employer dismissed the workman after holding a domestic enquiry into the charges. Since some dispute was pending before the Industrial Tribunal, the employer applied for "approval" of action of dismissal in compliance with the proviso to Section 33(2)(b) of the Act. The workman made an application under section 33-A of the Act Apart from relying on validity of domestic enquiry, the employer adduced all the evidence before the Tribunal in support of its action. On basis of evidence before it the Tribunal came to the conclusion that the facts of misconduct committed by the workman were of serious nature involving danger to human life and therefore dismissed the application under section 33-A and accorded "approval" to the action or dismissal taken by the employer. In this situation the Apex Court held that if the enquiry is not defective and the action of the employer is bonafide, the Tribunal will grant the "approval" and the dismissal would "relate back to the date from which the employer had ordered dismissal". If the enquiry is invalid for any reason, the Tribunal will have to consider for itself on the evidence adduced before it, Whether the dismissal was justified. If it comes to the conclusion on its own appraisal of such evidence that the dismissal was justified, the dismissal would "still relate back to the date when the order was made". Sasa Musa Sugar Works case (supra) was distinguished saying that observations made therein "apply only to a case where the employer had neither dismissed the employee nor had come to the conclusion that a case for dismissal had been made. In that case, the dismissal of the employee takes effect from the date of the award and so until then the relation of employer and employee will continue in law and in fact".

42. D.C.Roy [(1976) Lab. I.C. 1142] is the illustration where domestic enquiry held by the employer was found to be invalid being violative of principles of natural justice and the employer had justified the order of dismissal by leading evidence before the Labour Court, on appraisal of which the Labour Court found the order of dismissal justified. In appeal, the Apex Court upheld the award with the observation that "the ratio of Kalyani's case (supra) would therefore, govern the case and the judgment of the Labour Court must relate back to the date on which the order of dismissal was passed".

43. In Gujrat Steel Tubes Ltd. [1980 (1) LLJ 137] inverted image of the D.C. Roy's case was presented by a majority of three Judges Bench wherein it was held that "where no enquiry has preceded punitive discharge, and the Tribunal for the first time upholds the punishment, this court in D.C. Roy vs. Presiding Officer (supra) has taken the view that full wages be paid until the date of the award, There cannot be any relation back of the date of dismissal when the management passed the void order". Though the court ruled that law laid in D.C.Roy is correct yet it followed obiter instead of the decision.

Observations of the Apex Court in above decision, bearing on the relate back rule, were faulted in R.Thiruvirkolam [1997 (1) SCC 9] on the ground that they "are not in the line with the decision in Kalyani which was binding or with D.C. Roy to which Learned Judge Krishna Iyer J. was a party. It also does not match with the juristic principle discussed in Wade". The view taken in R.Thiruvirkolam (supra) was affirmed in Punjab Dairy/Development Corporation Ltd, [1997 (2) LLJ 1041].

44. In view of the catena of decisions, detailed above, it is clear that an employer can justify its action by leading evidence before the Tribunal. This equally applies to cases of total absence of enquiry and defective enquiry. A case of defective enquiry stands on the same footing as no enquiry. If no evidence is led or evidence adduced does not justify the dismissal by the employer, the Tribunal can order reinstatement or payment of compensation as it may think fit. But if it finds on the evidence adduced before it that the dismissal is justified, the doctrine of relate back is pressed into service to bridge the time gap between the rupture of the relationship of employer and employee and the finding of the Tribunal.

45. In view of the facts detailed above, punishment of dismissal from service without notice would relate back to the date of the order Claimants could not bring it to light that the order of dismissal from service would be applicable from the date of the award and not from the date of the order. All these facts would project that punishment of dismissal without notice, awarded to the claimants, is legal, fair and justified. Claimants could not show any illegality in the order of dismissal passed by the Airlines against them.

46. Since punishment of dismissal awarded to the aforesaid four claimants is found to be legal and justified, no case is there for the Tribunal to exercise its discretion of awarding lower punishment, as provided by Section 11-A of the Act. Punishment awarded to the claimants is appropriate, Claimants are not entitled to any relief, muchless relief of reinstatement in service with continuity and full back wages. Claim statement filed by them deserves dismissal. Accordingly, the same is, hereby, dismissed. An award is passed in favour of the Airlines and against the claimants It be sent to the appropriate Government for publication

Dated: 08.01.2014 DR. R.K. YADAV, Presiding Officer

नई दिल्ली, 3 फरवरी, 2014

कांआ 641.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डब्ल्यू.सी.एल. के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम

न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 14/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03/02/2014 को प्राप्त हुआ था।

[सं. एल-22012/136/2008-आई आर (सीएम-II)]

बी० एम० पटनायक, डेस्क अधिकारी

New Delhi, the 3rd February, 2014

S.O. 641.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 14/2009) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of Rayatwari Sub Area of WCL, and their workmen, received by the Central Government on 03/02/2014.

[No. L-22012/136/2008-IR(CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE SHRI J.P. CHAND. PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CG1T/NGP/14/2009

Date: 13.01.2014.

Party No. 1 : The Sub Area Manager
Rayatwari Sub Area of WCL,
Post- Rayatwari,
Yabatmal (MS)- 445307.

Versus

Party No. 2 : Vice President,
Jharkhand Colliery Mazdoor Union,
Dadmahal Ward, Hanuman Khidki,
Chandrapur (MS)

AWARD

(Dated: 13th January, 2014)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Rayatwari Sub Area of WCL and the Union, Jharkhand Colliery Mazdoor union for adjudication, as per letter No. L-22012/136/2008-IR (CM-II) dated 31.03.2009, with the following schedule:—

"Whether the action of the management of M/S WCL in denying employment to the dependent of late Shri Ramdhari Mukaram is legal and justified? To what relief the claimant is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the union "Jharkhand Colliery Mazdoor Union the ("the union" in short) filed the statement of claim on behalf of the applicant, Shri Dinesh Ramdhan Mukaram ("the applicant" in short) and the management of WCL (here-in-after referred to as the "Party No. 1") filed its written statement.

The case of the applicant as projected by the union in the statement of claim is that the deceased father of the applicant, Ramdhari Tukaram was appointed as a loader by Party No. 1 on 19.10.1972 and he worked with Party No. 1 till 22.07.2001, the date of his death and deceased Ramdhari was a permanent employee of Party No. 1 and after the death of Ramdhari, his widow applied for compassionate appointment for her son, the present applicant by submitting applications dated 15.01.2005 and 11.11.2006, but the Party No. 1 deliberately and illegally avoided to give employment to the applicant by applying illegal parameter, which is clear cut discrimination towards the applicant and as in the mean time, mother of the applicant died, the applicant approached it (union) and authorized it to pursue the matter before the concerned authority on his behalf and though it raised the issue before the Party No. 1, on behalf of the applicant to provide him compassionate employment, Party No. 1 failed to take cognizance of its application.

It is further pleaded by the union that the deceased workman had discharged his duty for 24 years as a permanent employee till his death and as per the provisions of Coal Wages Agreements, the applicant is entitled for employment on the basis of compassionate and the claim of the applicant was rejected by the Party No. 1 saying that deceased Ramdhari, the late father of the applicant was a "Badli" worker, but "Badli" worker also falls within the definition of "workman" and "Badli" worker is also entitled to the benefits under all industrial laws and the applicant is entitled for employment on compassionate ground and as Party No. 1 refused to give employment to the applicant, the union raised the dispute before the ALC and ultimately, the dispute was referred by the Central Government to this Tribunal for adjudication.

Prayer has been made by the union to direct the management to provide employment to the applicant with all consequential benefits.

3. The party No. 1 in the written statement has pleaded *inter-alia* that the present reference is vague, as the establish in which, the workman was working, his designation etc. have not been mentioned and hence, the reference is not maintainable and the dispute has been raised by the union, but the union has not produced any material on record to show that deceased Ramdhari Mukaram was a member of the union and the union is not competent to raise an industrial dispute of this nature and the dispute is not an industrial dispute as defined under section 2 (k) of the Act.

It is further pleaded by Party No. 1 that deceased Ramdhari was appointed as a loader on 19.10.1972 at Ballarpur Pit No. 3 & 4 and as Ramdhari was unauthorisedly absent from duty, the management vide its communication No. 373 dated 06.05.1996 advised him to join duties and also informed him that in case of his failure to join duties, he would be treated as a 'Badli' worker and as Ramdhari did

not join duties vide letter 489 dated 12/15.06.1996, he was made a Badli worker and the placement/ conversion of Ramdhari as a Badli worker was not protested by the workman or his union and Ramdhari joined at Mahakali colliery as a Badli worker w.e.f. 15.06.1996 and worked as such till his death on 21.07.2001 and due to his death, his name was removed from the roll of Badli workers of Mahakali colliery and Ramdhari did not complete 240 days as Badli worker in any calendar year and wife of deceased workman after a gap of 4/5 years, requested the management to consider the case of her son for employment vide applications dated 15.01.2005 and 11.11.2006 and there was inordinate delay on the part of the applicant requesting the management to appoint him on compassionate ground and the applications were rejected by the competent authority on the grounds that deceased workman, Ramdhari Mukaram was not a permanent employee and he was on Badli roll at the time of his death, which was in tune of the prevailing policy and therefore, its action is justified and legal and interestingly, the applicant, Dinesh did not make any application himself for employment, soon after the death of his father, even though he was already a major at that time and it is obvious that he was not interested in securing the employment and the applicant is not entitled for any relief.

4. Both the parties have adduced oral evidence in support of their respective claim, besides placing reliance on documentary evidence. The union has examined Shri Kishore Potanwar, the Vice-President of the union as a witness in support of the claim. Shri Shrikrishna Shelke, the Senior Personnel Manager of Rayatwari Sub Area has been examined as a witness by the Party No. 1. The evidence of the witness examined by the union and the witness for the Party No. 1 is in the same line of the stands taken in the statement of claim and written statement respectively.

5. The witness examined on behalf of the union in his cross-examination has admitted that he has not filed any document to show, that deceased Ramdhari was a member of their union and there was no resolution by the general body or Executive committee of the union to espouse the claim of the dependents of Ramdhari and at the time of his death, Ramdhari was working as a Badli worker and he was treated as a Badli worker as he remained absent regularly.

6. The witness for the Party No.1 in his cross-examination has admitted that the definition of workman in the Standing Order includes "Badli". The witness for the Party No. 1 has further admitted in his cross-examination that the provisions of NCWA are binding to WCL and the coal industry and in NCWAs, there is provision of giving employment to the dependents.

7. At the time of argument, it was submitted by the learned advocate for the union that the union is a registered union and the union is entitled to raise the dispute on behalf of the dependent of late workman Ramdhari and the appointment of late Ramdhari was made as a permanent loader in 1972 and there is no force in the contention made

by the Party No. 1 that late Ramdhari was a habitual absentee, as not a single document has been filed in support of such claim and the applicant has claimed employment on the basis of the provisions of the NCWA, the settlement between the WCL and its workmen and not on compassionate ground and there is no bar in the NCWA or in the Certified Standing Order of WCL for providing employment to the dependents of a Badli worker and as such, the action of the Party No. 1 in not providing the applicant employment on the ground that his father was a Badli worker is not sustainable and as such, the applicant is entitled for employment.

In support of such contentions, reliance has been placed by the learned advocate for the union on the decisions reported in 1993 (I) BLJ- 52 (M/s. BCCL Vs. Their Workmen), 2004 I-CLR-872 (Panyanm Cement Employees Union Vs. Commissioner of Labour Hyderabad).

8. Per contra, it was submitted by the learned advocate for Party No. 1 that the union has no locus standi to raise the present dispute and deceased Ramdhari Mukaram, the father of the present applicant though was appointed as a permanent loader in 1972, he used to remain unauthorised absent from duties and as per the order. Ext. M-III the deceased workman was converted to Badli worker and he worked as Badli worker till his death and such facts have been admitted by the witness for the union and temporary, casual and Badli workers are not regular employees of the coal mines, so their dependents are not entitled to get the benefits of compassionate appointment as provided under the NCWA, It was further submitted that compassionate appointment cannot be claimed as a matter of right and such appointment is granted to tide over the financial hardship of the family and it can be granted only, if there is a specific provision provided for the same and as there is no specific provision for providing the benefit of compassionate appointment to the family of a Badli worker and as the family of late Ramdhari sustained for more than 5 years, after the death of Ramdhari, the applicant is not entitled for compassionate appointment.

9. Before delving into the merit of the case, I think it proper to mention about the principles enunciated by the Hon'ble High Courts in the two decisions cited by the learned advocate for the union.

In the judgment reported in 2004 ICLR-872 (Supra), the Hon'ble High Court of Andhra Pradesh have held that:—

"Badli workers/employees-Working in Panyam Cement factory-Whether workman under I D Act? Whether entitled to be included in voters lists of Trade union-Held that Badli workers are 'Workmen' as contemplated under section 2 (S) of the I.D. Act. Entitled to benefits under all industrial laws. Denial of right of Badli workers to join Trade union, amounts to unfair labour practice-Person employed even for a day is 'Workman'".

10. In the judgment reported in 1993 (i) BLJ-52 (Supra), the Hon'ble High Court, Ranchi Bench have held that:—

Section 10(1) (d) National Coal Wages Agreement No. II- Dispute referred to Respondent No. 1 for us award an question whether dependant of a workman who died while in service of the company should be employed by Company. Respondent No. 1 gave his award in affirmative for giving employment to the son of the deceased employee. The award was challenged before the High Court in writ petition.

** ** ** ** ** ** ** **

Held that in any event, there is nothing in National Coal Wages Agreement No. II to show that clause 10.4.2 thereof is applicable only to a permanent workman.

Keeping in mind the principles enunciated by the Hon'ble Courts in the decisions cited by the parties, the present case at hand is to be considered.

11. So far the first contention regarding the union having no authority to raise the dispute on behalf of the applicant is concerned, it is found from the pleadings of the parties, the facts that the union had raised the dispute before the ALC on behalf of the applicant and that the Central Government has referred the matter for adjudication and so also the provisions of Section 36 (3) of the Act that the union is competent to raise the dispute,

12. Admittedly, compassionate appointment is not a matter of right. However, this is not a case of providing employment to the applicant on the ground of compassionate appointment. The applicant has claimed employment on the basis of the provisions of NCWA, which are binding on the Party No. 1. Moreover, the prayer of the applicant to give him employment was rejected by Party No. 1 on the ground that his father was a Badli worker and that the provisions of NCWA are not applicable to Badli worker and not on any other ground including the ground of compassionate appointment. Hence, it is held that there is no force in the contention raised by the learned advocate for the Party No. 1 that the applicant is not entitled for employment as family of the late Ramdhari sustained five years after the death of Ramdhari.

13. It is clear from the pleadings of the parties, evidence on record and the submissions made by the learned advocates for the parties that the claim of the applicant to give him employment was rejected by the Party No. 1 only on the ground that he being the dependent of a Badli worker is not entitled for employment. So, the only point for consideration is whether the dependent of a Badli worker is entitled for employment as per the provisions of NCWA.

14. The appointment of deceased Ramdhari in 1972 and that he was working as a Badli worker on 22.07.2001 the date of his death has not been disputed by the parties. It is also not disputed that there were and are provisions in NCWAs for giving employment to one of the dependents of a worker, who dies while in service. As on the date of death of Ramdhari NCWA-VI was in force, it is necessary to consider as to whether the applicant is entitled for employment as provided in NCWA-VI.

The relevant portions of clause 9.3.0, 9.3.1, 9.3.3 and 9.3.4 of NCWA VI, which are in respect of giving employment to the dependent of a workman, who dies while in service are as follows:

9.3.0:—Provision of Employment of dependants.

9.3.1:—Employment would be provided to one dependant of workers who are disabled permanently and also those who die while in service. The provision will be implemented as follows.

9.3.3:—The dependant for this purpose means the wife/husband as the case may be, son and legally adopted son

9.3.4:—The dependants to be considered for employment should be physically fit and suitable for employment and aged not more than 35 years provided that the age limit in case of female spouse would be 45 years as given in clause 9.5.0. In case of male spouse is concerned, there would be no age limit regarding provision of employment.

It is clear from the above provisions that a dependant of a workman is entitled to employment if the workman dies while in service. The specific word mentioned in the said clause is "workman" and nothing else. It does not specify the category of workman. It also does not say that dependants of Badli workman are not entitled for the benefit of the same. It also does not provide that dependents of Badli worker, who had not done 190/240 days of work in any calendar year, are not entitled to get the benefit of the provision.

Now, it is to be considered as to whether a Badli worker is a workman or not. NCWA VI does not have any such definition. It is admitted by the parties that the provisions of certified standing orders of the WCL were applicable to deceased Ramdhari. Clause 3 of the certified standing order provides the classification of "Workman". In clause 1 of the said standing order (Commencement and Application), it is mentioned that it shall apply to all workman employed in all units of M/s. Western Coalfields Limited situated in different place in the country which come within the definition of Industrial Employment (Standing Orders) Act, 1945 and include all workmen governed by the National Coal Wage Agreement. Section 3.1 of the said Standing Order provides the classification

of workman for the purpose of the Standing Order. The same reads as follows:

- (a) Apprentice
- (b) Badli or Substitute
- (c) Casual
- (d) Permanent
- (e) Probationer
- (f) Temporary

The above classification shows that Badli or Substitute employee is also a workman.

When there is no bar either in the NCWA or in the Certified Standing Order to give the benefit of provisions of the NCWA VI to dependants of Badli workman (whether he had done 194/240 days of work in any calendar year or not), the decision of the Party No. 1 that the applicant is not entitled for employment is not justified. Hence, it is order:—

ORDER

The action of the management of M/S WCL in denying employment to the dependent of Late Shri Ramdhari Mukaram is illegal and unjustified. The applicant Dinesh S/o. Ramdhari Mukaram is entitled for employment in accordance with the provisions of the NCWA in force at present. The Party No. 1 is directed to give employment to the applicant in accordance with the provisions of NCWA and other rules as applicable within a month of the publication of the award.

J. P. CHAND, Presiding Officer

नई दिल्ली, 3 फरवरी, 2014

कांआ 642.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मै० एस्० के० कोल इंस्पेक्शन प्रा० लि० के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 25/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03/02/2014 को प्राप्त हुआ था।

[सं० एल्० 22012/25/2009—आई आर (सीएम—II)]

बी० एम्० पटनायक, डेस्क अधिकारी

New Delhi, the 3rd February, 2014

S.O. 642.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 25/2009) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of M/s. Mitra S.K. Coal Inspection Pvt. Ltd. and their workmen, received by the Central Government on 03/02/2014.

[No. L-22012/25/2009-IR(CM-II)]

B.M. PATNAIK, Desk Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/25/2009

Date: 17.01.2014.

Party No. 1 : The Agent,
M/s. Mitra S.K. Coal Inspection P. Ltd.,
Shrachi Centre, 74 B, AJC Bose Road,
5th Floor,
Kolkata-700016,

Versus

Party No. 2 : Shri Neelkanth M. Walode.
R/o, Village Gujri Chowk Pohara,
Taluka Lakhmi, Distt. Bhandara,
Maharashtra

AWARD

(Dated: 17th January, 2014)

In exercises of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of M/s. Mitra S.K Coal Inspection Pvt. Ltd. and their workman, Shri Neelkanth M. Walode, for adjudication, as per letter No.L-22012/25/2009-IR (CM-II) dated 13.07.2009, with the following schedule:—

"Whether the action of the management of M/s. Mitra S.K. Coal Inspection Pvt. Ltd., a contractor of M/s, WCL, in terminating the services of Shri Neelkanth M. Walode, Sampler is legal and justified? To what relief is the workman concerned entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Neelkanth M. Walode, ("the workman" in short), filed the statement of claim and the management of M/s. Mitra S.K. Coal Inspection Pvt. Ltd., ("Party No. 1" in short) filed their written statement.

The case of the workman as presented in the statement of claim is that M/s. Mitra S.K. Coal Inspection Pvt. Ltd., took his interview for five times and issued appointment letter and engaged him as a Sampler at the siding of Majri Colliery of WCL on 08.03.1999 and then he was transferred by order No. 239 dated 27.04.1999 to CHP Ballarpur siding and at Ballarpur, he worked alongwith Bilash Atram, Sunil Petkar and Supervisor, Netaji Giradkar and after some days, Bilash Atram left the job and Sunil Patekar was transferred by the company on 06.10.1999 to another siding and the company also transferred Netaji Giradkar in February, 2000 to another siding and posted one Ajay Pindalwar as the Supervisor of Ballarpur siding and Ajay Pindalwar also left the job on 01.06.2004,

so he worked with Technical Inspector, Shri Raman Satpute of WCL as a Sampler and he himself and Shri Satpute were signing the sample reports.

The further case of the workman is that when he asked the Manager of the company, Shri Choudhary about P.F. slip and letter of permanent appointment, Shri Choudhary asked him to resign and subsequently to send him the authorization letter alongwith the letter of permanent appointment and on 12.05.2005, he was issued with the authorization letter and by such statement of Shri Choudhary he was disappointed and he did not resign, so Shri Choudhary harassed him and put pressure on him for his resignation and declared that unless and until he would resign, neither payment would be made nor any document would be given to him and Shri Choudhary stopped the payment of his wages for June, 2005 and on 14.07.2005, he sent an application by fax to the Manager, Head Office, Kolkata, requesting for payment of his wages, but no action was taken in the matter and though he repeatedly requested Shri Choudhary over phone for payment of his wages, Shri Choudhary insisted for his resignation, so on 21.07.2005, he approached the Labour Commissioner by filing an application and on 20.09.2005, Shri Choudhary appeared before the Commissioner and signed on the proceedings to make the full payment on 23.09.2005, but he did not make any payment, rather handed over a back dated illegal termination letter, which was received by him on 01.10.2005 from Chandrapur branch office of the company.

It is also pleaded by the workman that he intimated the facts to the ALC (c) Chandrapur and the ALC noticed the management of Sasti Area of WCL, Director and Manager of the company, besides himself to appear on 03.08.2006 and management of WCL appeared before the ALC(C), Chandrapur and agreed to make recovery payment of four months and signed on the proceedings and the Labour Commissioner issued a letter to him to appear in the office of the WCL on 16.10.2006 to receive the recovery payment and though he went to the office of WCL on 16.10.2006 no payment was made to him, so being harassed, he filed an application before the ALC (C), Chandrapur on 27.11.2006 intimating him about the non-payment of the recovery payment and on 15.02.2007 WCL made the payment of Rs. 11,232/- by way of a cheque, which was handed over to him by the office of ALC (C). Chandrapur and as the termination of his services is illegal and without compliance of the mandatory provisions, he is entitled for reinstatement in service permanently with full back, wages and all other consequential benefits.

3. The Party No. 1 in the written statement has pleaded *inter-alia* that it is registered under the Bombay Shops and Establishment Act, 1948, since the year 1990 and it undertakes contractual jobs for execution of the work of third party sampling of coal and analysis for coal companies including WCL and contracts are being given

to it by floating tenders and such works are being awarded for fixed terms and normally, the duration of such contract is for a period of one year and for execution of the awarded contracts, it engages skilled and unskilled workers as samplers or supervisors for a fixed term on contract basis and on termination of the contract, the services of the employees engaged by it on work also terminate automatically. It is further pleaded by the Party No. 1 that it is not an industry and the business carried on by it was not by or under the authority of the Central Government and it is a private limited company and as such, the Central Government is not the appropriate government as per Section 2(a) of the Act and the dispute does not come within the purview of the Act and the Central Government has no jurisdiction to entertain and refer the dispute to the Tribunal and the reference is bad in law and thereby, this Tribunal has no jurisdiction to adjudicate the dispute.

The further case of Party No. 1 is that it does not have perennial nature of work, which continues permanently and on getting a fresh contract, as per requirement, it engages employees temporarily for a fixed term on contract basis and once the contract is over, the services of the employees so employed are automatically terminated and it is not under any obligation to continue them on permanent roll and at times, when the contract work of one place is over and there is necessity of employees at any other contract work at another place, such employees are offered job and the workman was appointed as a sampler mazdoor on contract basis as per the work order from time to time and he was first engaged at Majri siding of WCL and he was not appointed by following the due procedure of employment and the period of employment was limited to the period of sampling work as per the contracts awarded to it by WCL and MSEB and as per order No. 339 dated 27.04.1999, the workman was asked To join Ballarpur Railway siding from Majri CHP Railway siding as per requirement and accordingly, the workman joined Ballarpur siding and the letter dated 2299/247 dated 04.05.1999 mentioned by the workman is about the explanation sought from him for leaving duly assigned to him at the work spot, without permission of the completed authority and treating the period of his absence as leave without pay and the appointment order itself speaks that the workman was appointed for a specific period till the expiry of the work order and the services of the workman automatically came to an end, as soon as the contract work was over and the workman accepted the letter of appointment knowing fully well that after completion of the work order, his services would stand terminated, so the workman cannot claim regular work and the workman was never authorized to sign the sampling reports, as he was not competent to sign such reports and the documents submitted by him relate to the supply of racks by the Railway and the loading done and the reports were signed by the Technical Inspector only and none else and it appears that the workman had signed the same at his own, which has no significance and

as per letter dated 24.09.2005, the workman was intimated that his contract ceased w.e.f. 01.06.2005, after expiry of the contract work and the wages of the workman was never with held and as he was not in service from 01.06.2005, he was not entitled to any wages and the provisions of the Act are not applicable to the case of the workman, as there was no termination or retrenchment at all and his appointment was on contract basis and the claim of the workman is vague and the proceedings has been filed only to extract money from him and though the workman was not engaged from 01.06.2005, he filed a complaint before the ALC (C), Chandrapur and the dispute was settled after payment of Rs. 11,232 by WCL, the principal employer through ALC (C), Chandrapur and termination of the workman after completion of the contract does not amount to retrenchment within the meaning of S.2(oo) of the Act and the workman is not entitled to any relief.

4. In support of his claim, the workman has examined himself as a witness, besides placing reliance on documentary evidence.

5. The workman has reiterated the facts mentioned in the statement of claim, in his examination-in-chief, which is on affidavit.

However, in his cross-examination, the workman has admitted that Exts. W- I and W-II are his appointment letters dated 29.03.2000 and 31.03.2001 respectively and he did not raise any objection to the conditions mentioned in Exts. W- I and W-II and reported for duty and in Exts. W-I and W-II, it had been clearly mentioned that his tenure of service with the management was contractual service and that his services would be terminated at the end of the contracted period or completion of the assignment mentioned in the said letters, which ever would be earlier and Ext. W-III is his termination letter dated 24.09.2005 and after getting Ext W-III he did not give any letter to the management and Ext. W-IV is his application to become a member of Provident Fund and Ext, W-IV bears his signature and in Ext. W-IV, the nature of his appointment has been mentioned as, "on contract " basis.

6. It is to be mentioned here that subsequent to 11.07.2013, the parties did not appear, so on 19.12.2013, the case was closed and fixed for award.

7. On perusal of the materials on record including the pleadings of the parties and the documentary and oral evidence, it is found that the Party No. 1 is a private limited company. There is no material on record to show that it is an industry carried on by or under the authority of the Central Government or a controlled industry as specified in this behalf by the Central Government. So, the Central Government cannot be said to be the appropriate Government to refer the dispute to the Tribunal for adjudication. The Hon'ble Apex court in a number of decisions have enunciated the principles that "a dispute, which can be referred for adjudication under section 10(1) of the I.D. Act of necessity, has to be an industrial dispute

which would clothe the appropriate Government with power to make the reference and the industrial Tribunal to adjudicate it.

At this juncture, it is to be mentioned here that by the Industrial Disputes (Amendment) Act, 2010, which came into force on 09.09.2010, the Central Government amended sub-clause (ii) of Section 2 and added a proviso, which reads that, "Provided that in case of a dispute between a contractor and the contract labour employed through the contractor in any industrial establishment, where such dispute first arose, the appropriate Government shall be the Central Government or the State Government, as the case may be, which has control over such industrial establishment.

If the above proviso is applied to the present case, then it can be said that the Central Government is the appropriate Government to refer the dispute for adjudication. However, the amended proviso cannot be applied as the alleged dispute in this case arose prior to such amendment.

As the Central Government is not the appropriate Government, the reference should not have been made for adjudication.

8. So far the merit of the case is concerned, the workman has claimed that Party No. 1 took his interview for five times and issued the appointment letter and engaged him as a sampler at the siding of Majri Colliery of WCL on 08.03.1999 and then he was transferred to Ballarpur siding of WCL and he worked there till June, 2005 and Party No. 1 stopped payment of his wages for the month of June, 2005.

It is to be mentioned here that in the schedule of reference, the alleged date of termination of the services of the workman has not been mentioned. The workman has also not mentioned the date of his termination in the statement of claim. In the statement of claim, the workman has only mentioned that on 01.10.2005, he received the termination order from Chandrapur branch office of Party No. 1 and his termination is illegal due to non compliance of the provisions of the Act.

Party No. 1 has claimed that the appointment of the workman was on contract basis and once his contract came to an end, his appointment automatically was over and as such, the case of the workman is not a case of retrenchment and there was no need to comply with the provisions of section 25-F of the Act. According to Party No. 1, from 01.06.2005, the workman was not engaged by it as it had no further contract work.

On perusal of the admission of the workman in his cross-examination as already mentioned above and the documents Exts. W-I to W-IV, it is found that the appointment of the workman by Party No. 1 was on contract basis. It is also found that termination of the service of the workman was as a result of the expiry of the contract as per the stipulation on that behalf contained in the contract. As

such, the termination of the workman cannot be said to be retrenchment as per the definition of Section 2 (oo) of the Act. So, there was no necessity for Party No. 1 to comply with the provisions of Section 25-F of the Act.

From the materials on record and the discussion made above, it is found that the workman is not entitled to any relief. Hence, it is ordered:—

ORDER

The action of the management of M/s. Mitra S.K. Coal Inspection Pvt. Ltd., a contractor of M/s. WCL, in terminating the services of Shri Neelkanth M. Walode, Sampler is legal and justified. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 3 फरवरी, 2014

का.आ. 643.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एफ.सी.आई. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 36/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03/02/2014 को प्राप्त हुआ था।

[सं. एल-22012/249/2007-आई आर (सीएम-II)]
बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 3rd February, 2014

S.O. 643.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 36/2007) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Bhubaneswar as shown in the Annexure, in the industrial dispute between the management of Food Corporation of India, and their workmen, received by the Central Government on 03/02/2014.

[No. L-22012/249/2007-IR(CM-II)]
B. M. PATNAIK, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT, BHUBANESWAR

Present : Shri J. Srivastava,
Presiding Officer, C.G.I.T.-cum-Labour
Court, Bhubaneswar.

INDUSTRIAL DISPUTE CASE No. 36/2007
Date of Passing Award-20th January, 2014

Between : 1. The General Manager,
Food Corporation of India,
Khadya Bhavan, Vani Vihar,
Bhubaneswar, Orissa- 751 004.
2. The District/Area Manager,
Food Corporation of India,
District Office, Berhampur, Orissa.
... 1st Party-Managements

(And)

Shri Gajendra Kumar,
At. Nayagingda,
PO. Angeswarpada,
PS. Nuagaron, Distt. Jagatsinghpur,
Orissa. ... 2nd Party-Workman

Appearances : M/s. B.K. Mohanty, ... For the 1st Party-
Advocate. Managements

M/s. P.K. Das, ... For the 2nd Party-
Advocate. Workman

AWARD

The Government of India in the Ministry of Labour has referred an industrial dispute existing between the employers in relation to the management of Food Corporation of India and their workman in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 *vide* its letter No. L-22012/249/2007-IR(CM-II), dated 25.10.2007 in respect of the following matter:—

Whether the action of the management of Food Corporation of India in dismissing Shri Gajendra Kumar *w.e.f.* 08.12.2004 is legal and justified? If not, to what relief the workman is entitled?

2. The 2nd Party-workman in his statement of claim has stated that the 2nd Party workman being a departmental worker applied to the Management on 31.12.2002 for change of his name from Gajendra Kumar to Udhav Charan Swain after swearing an affidavit dated 19.10.2001 and furnishing the news paper publication in daily "The Sambad" dated 10.8.2002 as his name was recorded as Udhav Charan Swain in revenue record which he came to know lately. He is an active member of the FCI Workers Union and having a long back-ground of his struggle and litigation in various courts for the interest of the FCI workers. For this and various other reasons the then Senior Regional Manager, Orissa, Shri P.K. Mohapatra, IAS became vindictive and bias and wanted to victimize him. Therefore he issued a letter dated 18.10.2003 to the 2nd Party-workman alleging that Shri Gajendra Kumar has got employment in FCI by impersonating his name with *malafide* intention and on enquiry from different sources the actual recorded name of Shri Gajendra Kumar was found to be Udhav Chandra Swain son of Shri Chandramani Swain. He was called upon to show cause as to why disciplinary action should not be taken against him under the provisions of the Standing Order for furnishing false name at the time of employment in FCI. The 2nd Party-workman sent his reply *vide* letter dated 17.11.2003 denying all the charges. On 9.12.2003 the District Manager, FCI, Berhampur *vide* his letter dated 9.12.2008 issued a memorandum enclosing therewith a statement of article of charges, imputation of misconduct

or misbehavior, list of documents and witnesses on the proposed charges. The 2nd Party-workman was asked to submit his written statement within fifteen days and also to state whether he desired to be heard in person. From the letter dated 21.2.2003 of Tahasildar, Balikuda it was revealed to the 1st Party-Management that Shri Chandramani Swain has two sons namely Shri Narasingha Charan Swain and Udhav Charan Swain, Some sale deeds have also been executed in the name of Shri Udhav Chandra Swain and there is no revenue record in the name of Gajendra Kumar Swain. In the voter list dated 21.2.2003 furnished by the Collector, Jagatsinghpur it was revealed that Shri Chandramani Swain has no son by name of Gajendra Kumar Swain. The 2nd Party-workman *vide* his letter dated 27.12.2003 addressed to the District Manager replied to the memorandum dated 9.12.2003 denying the alleged charges and making a request to withdraw the show cause notice and allow a chance for personal hearing. Thereafter Shri L.A. Swamy after being appointed as an Enquiry Officer issued a memorandum of charges dated 9.12.2003 intending to conduct the domestic enquiry. The domestic enquiry was conducted on various dates. The Presenting Officer examined Shri G.B. Rath, Assistant Manager (Vigilance), Regional Office, Bhubaneswar as P.W.-1, but his cross examination was not concluded due to non-availability of certain documents. The cross examination was again deferred due to some reason. In the meantime the 2nd Party-workman has submitted his list of documents to be relied upon and also supplied copies of such documents to the Enquiry Officer. Since P.W.-1 Shri G.B. Rath was not available for cross examination on 21.8.2004, P.W.-2 Shri A.K. Lenka Chief Labour Inspector, District Office, FCI, Cuttack was examined and cross examined partly. The Enquiry Officer informed that he will issue written notice for the next date of hearing in due course. On 27.8.2004 the 2nd Party-workman submitted a list of seven witnesses to the Enquiry Officer making a request for sparing them on the next date of hearing. The defence assistant of the 2nd Party-workman wrote two letters on 14.9.2004 and on 24.9.2004 to the Enquiry Officer for fixing up next date of enquiry at least seven days before so that he can attend the enquiry without fail, but the Enquiry Officer kept silent and no date of enquiry was intimated neither to the 2nd Party-workman nor to his defence assistant.

3. Surprisingly the 2nd Party-workman was served with a memo dated 10.11.2004 issued by the District Manager stating that the Enquiry Officer has submitted his report of enquiry. Copy of enquiry report was enclosed therewith without proceedings of the enquiry. The 2nd Party-workman was directed to submit his representation within fifteen days of the receipt of the same. The 2nd Party-workman sent his reply within time and urged not to accept the report since the enquiry is incomplete and there is violation of principles of natural justice. But before the expiry of fifteen days of receipt of the said letter dated 10.11.2004 the District Manager, Berhampur issued a memo

dated 23.11.2004 stating that after going through the reply submitted by the workman against the enquiry report which held him guilty of the said charges he proposed to impose penalty of dismissal from the service of the Corporation. The workman may submit his representation on the proposed penalty by 3.12.2004 failing which final orders in the case would be passed accordingly. The 2nd Party-workman submitted his reply to the show cause notice on 3.12.2004 and prayed for personal hearing, but the disciplinary authority without considering his reply hastily passed the dismissal order dated 8.12.2004. The 2nd Party-workman thereafter made an appeal to the Senior Regional Manager, FCI Orissa, Bhubaneswar *vide* his application dated 3.1.2005 but the same was turned down. Then the 2nd Party-workman made a review petition to the Executive Director, East, FCI, Kolkatta *vide* his application dated 16.2.2006 but the same was rejected on the ground that no such provision of review is there in the Certified Standing Order of the Corporation. Thus the 2nd Party-workman has been dismissed from service illegally and in a most unjustified manner. The domestic enquiry is just an eye wash vitiated on the principles of natural justice. The domestic enquiry was not completed in lawful manner, even the cross examination of P.W.-1 Shri G.B. Rath was not over. The 2nd Party-workman was not given any opportunity to examine his witness of defence. His documents were not allowed to be exhibited which all speaks the unfairness of the domestic enquiry. The principles of natural justice have been violated. The Certified Standing Order under Clause-16(2)(c)(i) has not been adhered to. The Enquiry Officer hurriedly completed the enquiry within a period of three months as required under clause 16(2)(c)(iv) of the Certified Standing Order without giving adequate opportunity to the 2nd Party-workman to defend his case. Therefore the action of the Management of FCI in dismissing the 2nd Party-workman with effect from 8.12.2004 be held illegal and unjustified and he be reinstated in service with back wages and continuity in service.

4. The 1st Party-Management has averred in its written statement that the above proceeding is not at all maintainable according to law. The bio-data of the worker which is duly recommended by the workers Union is accepted by the FCI Management. Hence the bio-data of this workman which was recommended by the workers Union was accepted by the FCI Management. It is false and frivolous to allege that the then Senior Regional Manager became vindictive, biased and hostile to the Union and the 2nd Party-workman due to his active participation in the Union activities. When the 2nd Party-workman applied for change of his name, his bio-data and other relevant records along with those of other workers who have applied for change of name were referred to the concerned Collectors for enquiry. On the strength of the report of said enquiry, disciplinary proceeding was initiated against the 2nd Party-workman under Clause - 16 of the Certified Standing Order. To enquire upon the charges contained in the statement of imputation of charges

Shri L.A. Swamy, the then Assistant Manager (General), District Office, FCI, Berhampur was appointed as Enquiry Officer, who after conducting enquiry had submitted his enquiry report on 10.11.2004 in which the charges were found proved against the workman Shri Gajendra Kumar and it became clear that Shri Gajendra Kumar had fraudulently got appointment in FCI in his name, when his father Shri Chandramani Swain had no son in the name of Gajendra Kumar. According to the report of the Tahasildar, Balikuda, Shri Chandramani Swain had two sons, namely, Shri Narasingha Charan Swain and Shri Udhav Charan Swain. Their names have also been shown in the voter list. The disciplinary authority being District Manager, FCI, Berhampur, thereupon imposed the penalty of dismissal from service of FCI on Shri Gajendra Kumar, handling worker, FSD, Jagatsinghpur on 8.12.2004 under clause 16(2)(b)(v) of the Certified Standing Order Shri Gajendra Kumar filed an appeal before the appellate authority who after going through all the records, documents, enquiry report and appeal petition and upon personal hearing rejected the appeal saying that ample opportunity was given by the Enquiry Officer to the charged workman to defend his case. All the allegations of the workman are false and frivolous so far the conduct of enquiry is concerned. He was also asked by the Enquiry Officer to submit list of defence documents and defence witnesses, but he stated that he has no defence documents and witnesses during the preliminary enquiry. Then the charged workman was again given scope by the Enquiry Officer to produce defence documents and witnesses from time to time, but he failed even till commencement of hearing. Since the proceedings of the enquiry were required to be completed within a stipulated period the charged workman had deliberately tried to prolong the enquiry. The Enquiry Officer concluded the enquiry after giving ample opportunity to the charged worker. The allegations of the workman are baseless and vague and his case is liable to be dismissed.

5. The 2nd Party-workman in his rejoinder has disputed the allegations made by the 1st Party-Management in its written statement and reiterated his own assertions made in the statement of claim.

6. On the pleadings of the parties following issues were framed by my learned predecessor.

ISSUES

1. Whether the reference is maintainable?
2. Whether the departmental enquiry started against the workman Shri Gajendra Kumar was conducted fairly with due regard to principles of natural justice,
3. Whether the dismissal of the workman Shri Gajendra Kumar with effect from 8.12.2004 is legal and justified?
4. If not to what relief the workman is entitled?

7. The 2nd Party-workman has examined five witnesses namely, W.W.-1 Shri Gajendra Kumar the aggrieved workman, W.W.-2 Shri Chandramani Swain, father of the aggrieved workman, W.W.-3 Shri Kapileswar Mallick, W.W.-4 Shri Rabi Narayan Das and W.W.-5 Shri Banchanidhi Behera and relied upon a number of documents marked as Ext.-A to Ext.-Z and Ext.-AA to Ext.-AH.

8. The 1st Party-Management has examined four witnesses in all, namely, M.W.-1 Shri Murari Charan Tarai, M.W.-2 Shri Akshaya Kumar Lenka, M.W.-3 Shri Nishith Kumar Pradhan and M.W.-4 Shri L. Appala Swamy and relied upon several documents marked as Ext.-1 to Ext.-11.

FINDINGS

ISSUE NO. 1

9. The 1st Party-Management has alleged in its written statement that the proceeding of the case is not at all maintainable according to law, but no ground of uprooting the maintainability of the case has been mentioned either pertaining to law or facts. Even no evidence has been led on this issue. Nor any argumentative step has been taken at the time of hearing. As such it seems that the 1st Party-Management has forsaken this issue. Therefore there is no ground to hold that the reference is not maintainable. This issue is accordingly decided in the affirmative and against the 1st Party-Management.

ISSUE NO. 2

10. The departmental enquiry conducted against the 2nd Party-workman has been challenged on the ground of being unfair and in violation of the principles of natural justice. The cause for departmental enquiry arose on the making of an application by the 2nd Party-workman for change of his name from Gajendra Kumar to Udhav Charan Swain supported with a sworn affidavit and news-paper cutting. As no mention of the name of Gajendra Kumar was there in revenue records he felt it necessary to get his name changed from Gajendra Kumar to Udhav Charan Swain in his office record maintained by the 1st Party-Management. Admittedly the father's name of Shri Gajendra Kumar, the 2nd Party-workman is Chandramani Swain, resident of Village Nayasingda, PO. Angewarpada, P.S. Nuagaon, Distt. Jagatsinghpur. Shri Chandramani Swain has two sons, namely, Udhav Charan Swain, who according to the 2nd Party-workman is also known as Gajendra Kumar and Narasiagha Charan Swain. On receipt of application for change of name made by the 2nd Party-workman, the 1st Party-Management got it verified from the Tahasildar and Collector concerned. The report of Tahasildar revealed that there is no revenue record in the name of Shri Gajendra Kumar Swain. It was also revealed that Shri Chandramani Swain has two sons, namely, Shri Narasingha Charan Swain and Shri Udhav Charan Swain and some sale deeds have been executed in the name of Shri Udhav Charan Swain,

son of Chandramani Swain. But there is no iota of evidence that Shri Udhav Charan Swain is not known by the other name of Gajendra Kumar. It seems possible as the sale deeds were executed in the name of Udhav Charan Swain son of Chandramani Swain, Shri Gajendra Kumar moved the application to the 1st Party-Management for change of his name from Gajendra Kumar to Udhav Charan Swain so that he might not be deprived of the property recorded in the name of Udhav Charan Swain. Shri Chandramani Swain the father of the 2nd Party-workman has been examined on behalf of the 2nd Party-workman as W.W.-2 who has categorically stated in his evidence that "he has two sons. The elder son is Shri Udhav Charan Swain and the second son's name is Shri Narasingha Charan Swain. In the service record the name of Gajendra Kumar took place, but in the land record the name of Shri Gajendra Kumar stands as Udhav Charan Swain". He has confirmed that he has filed an affidavit to that effect before the Executive Magistrate. The 2nd Party-workman Gajendra Kumar has also given evidence in support of his claim. There is no difference in the name of father and residential address of Shri Gajendra Kumar and Udhav Charan Swain.

11. However, on the basis of report of the Tahasildar and the Collector the 1st Party-Management initiated a domestic enquiry against the 2nd Party-workman. The enquiry was conducted by Shri L. Appalla Swamy on charges that he got employment in FCI fraudulently by impersonating his name and thereby committed gross misconduct, which is unbecoming of a Corporation labour. The Enquiry Officer in a slip shod manner completed the enquiry without giving full opportunity to the 2nd Party-workman to cross examine the management witness Shri G.B. Rath, P.W.-1. He was also not given chance to examine his defence witnesses and produce and prove the defence documents. The Enquiry Officer Shri L. Appala Swamy examined as M.W.-4 on behalf of the 1st Party-Management has very straight forwardly admitted in his cross examination that "the cross examination of G.B. Rath was not over due to the demand of the original document by the defence assistant". He has further stated that "the last enquiry was fixed on 21.8.2004, on 21.8.2004 the 2nd Party-workman has submitted 11 documents, which I received as Enquiry Officer. I did not fix any further date for enquiry. The defence assistant from Kolkatta sent through courier a list of seven witnesses to be examined from the workman side, which was received by me on 21.8.2004, but I did not issue any further notice for further enquiry". The enquiry proceedings filed through Ext.-11 series shows that on 13.8.2004 cross examination of Shri G.B. Rath, P.W. could not be concluded since the charged official wanted some papers of Regional Office, Bhubaneswar enabling him for further cross examination in the matter. The list of defence documents, witnesses was received on that date, but it was recorded that the same will be sent to Enquiry Officer on or before 21.8.2004. The next date of hearing was fixed on 21.8.2004. But it is surprising to note that the enquiry

was not taken up on 21.8.2004 and it was not proceeded further. There is no proceeding recorded on 21.8.2004. The Enquiry Officer thereafter in his report marked as Ext.-6 has mentioned that the proceedings began on 28.4.2004 and concluded on 21.8.2004, but there is no recorded proceeding of 21.8.2004. Therefore it is established that no proceeding in the enquiry took place on 21.8.2004 and thereafter.

12. In this view of the matter a definite conclusion can be arrived at that the Enquiry Officer has not conducted the enquiry fairly and properly, even ignoring the principles of natural justice. The charged employee could not get proper and sufficient opportunity to cross examine the P.W. Shri G.B. Rath. He was also not allowed to examine his defence witnesses and prove his documents of defence which was received by the Enquiry Officer on 21.8.2004 as he himself admitted in his cross examination. He has categorically stated in his evidence that "I was transferred from Berhampur to Jeypore after 21.8.2004 for which I could not fix any date for domestic enquiry and coming from Jeypore I submitted my enquiry report on 11.10.2004". He has earlier stated that "I know there is a Standing Order of FCI where there is provision to accord and sufficient opportunity to the delinquent officer in the enquiry proceeding to defence his case". Therefore there is no iota of doubt that the domestic enquiry was not conducted fairly and properly. It was left incomplete and no opportunity to adduce defence evidence was given to the charge-sheeted employee, thus conducted grossly violating the principles of natural justice. The Issue No. 2 is therefore decided in the negative and against the 1st Party-Management.

ISSUE NO. 3

13. When it has been held under Issue No. 2 that the domestic enquiry was not conducted fairly and properly with due regard to the principles of natural justice, dismissal order of the 2nd Party-workman Shri Gajendra Kumar with effect from 8.2.2004 cannot be said to be legal and justified. Moreover the enquiry report of the Enquiry Officer seems to have been given mechanically without discussing the evidence with respect to the charges levelled and the conclusions derived there-under. The Enquiry Officer has certainly not applied his mind in arriving at a conclusion regarding establishment of charges beyond reasonable doubt. The Hon'ble Supreme Court in the case of "Anil Kumar-Versus-Presiding Officer and Others [Civil Appeal No. 4692 (NL) of 1984] reported in AIR 1985 SC 1121 has held that "where a disciplinary enquiry affects the livelihood and is likely to cast a stigma and it has to be held in accordance with the principles of natural justice, the minimum expectation is that the report must be a reasoned one. The Court then may not enter into the adequacy or sufficiency of evidence. But where the evidence is annexed to an order sheet and no correlation is established between the two showing application of mind, we are constrained

to observe that is not an enquiry report at all. Therefore, there was no enquiry in this case worth the name and the order of termination based on such proceeding disclosing non-application of mind would be unsustainable." The Disciplinary Authority acting on such enquiry report is too supposed to have passed the dismissal order without application of mind. The evidence led in the case or in the enquiry is also not sufficient to hold the workman guilty of the charges. Therefore the dismissal order cannot be sustained. This issue is decided in the negative and against the 1st Party-Management.

ISSUE NO. 4

14. Since the action of the Management of FCI in dismissing Shri Gajendra Kumar from service with effect from 8.12.2004 is not found to be legal and justified and in consonance with the principles of natural justice, the workman is entitled to reinstatement in service with full back wages and continuity of service.

15. The reference is answered accordingly.

J. SRIVASTAVA, Presiding Officer

नई दिल्ली, 3 फरवरी, 2014

का०आ० 644.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डब्ल्यू.सी.एल. के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 38/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03/02/2014 को प्राप्त हुआ था।

[सं० एल-22012/36/2009-आई आर (सीएम-II)]

बी० एम० पटनायक, डेस्क अधिकारी

New Delhi, the 3rd February, 2014

S.O. 644.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 38/2009) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of Durgapur O/C Mines of WCL, and their workmen, received by the Central Government on 03/02/2014.

[No. L-22012/36/2009-IR(CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

**BEFORE SHRI J.P. CHAND, PRESIDING OFFICER,
CGIT-CUM-LABOUR COURT, NAGPUR**

Case No. CGIT/NGP/38/2009

Date: 20.01.2014

Party No. 1 : The Sub Area Manager,
Durgapur O/C Mines of WCL,
Post: Urjanagar,
Distt. Chandrapur (M.S.)

Versus

Party No. 2 : Shri B.S. Ishwarkar,
Rashtriya Colliery Mazdoor Congress,
Vijay Bhawan, Vitthal Mandir Ward,
Chandrapur (M.S.)

AWARD

(Dated: 20th January, 2014)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of WCL and Shri Sachin Thamke, for adjudication, as per letter No. L-22012/36/2009-IR (CM-II) dated 09.11.2009, with the following schedule:—

"Whether the action of the management of M/s. WCL, in not providing employment to Shri Sachin, the dependant Son of Late Shri Thamke is legal, proper and justified? To what relief is the dependent entitled for?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the applicant, Shri Sachin Thamke, ("the applicant" in short) filed his statement of claim and the management of WCL, (here-in-after referred to as the "Party No. 1") filed its written statement.

The case of the applicant as presented in the statement of claim is that his father, deceased Suresh Thamke was working as a general mazdoor from 02.04.1984 continuously without any break till 21.01.2002 and his father was a permanent employee of Party No. 1 and due to the death of his father while in service, he is entitled for employment as per the provisions of clause 9.3.0 of NCWA-VII, which is in regard to giving of employment to dependent of a workman and he is eligible for such employment by Party No. 1 and in accordance with such provisions, he filed his claim for employment before the Party No. 1, but Party No. 1 refused for the same.

It is further pleaded by the applicant that Party No. 1 refused their claim for gratuity, but the same was sanctioned by the competent authority, the Asstt. Labour Commissioner and the appeal preferred by Party No. 1 before the Regional Labour Commissioner, Nagpur against the order of sanction of gratuity was rejected, so, the Party No. 1 paid gratuity to his mother and later on the amount of CMPF fund was also paid by Party No. 1 and the action of Party No. 1 in not providing him employment as per the provisions of the NCWA-VII is unjustified and illegal.

The applicant has prayed for a direction to Party No. 1 to provide him employment as the dependent son of the deceased workman, Shri Suresh Thamke.

3. In the written statement, Party No. 1 has pleaded *inter-alia* that the dispute had been raised by advocate

Shri B.S. Ishwarkar, Rashtriya Colliery Mazdoor Congress and Shri Ishwarkar being an advocate cannot become an officer bearer of the Trade union, until the bye laws and constitution of the union specifically provide for the same and no document has been filed on record to establish such facts and as such, Shri Ishwarkar, advocate has not *locus standi* to raise the dispute and on bare persual of the reference, it can be found that the reference is vague, in as much as it does not specify the establishment, where late Suresh Thamke was working and the date of his death and therefore, the reference is not maintainable.

The further case of the Party No. 1 is that the statement of claim filed on 08.12.2009 has been signed and verified by the applicant and the applicant is neither the workman nor the authorized representative of the union and he is not competent to sign the statement of claim to fulfill the tests required to treat the grievance as industrial dispute either under section 2(K) or 2-A of the Act and more so, there is no resolution filed on record to signify that the union has espoused, championed and supported the present dispute and on these grounds, the reference is not maintainable.

It is also pleaded by the Party No. 1 that deceased Suresh Thamke was appointed in its services as Badli worker in the year 1990 and his performance was all long very poor and he did not attend his duties for 240 days in any year since his appointment and therefore, he was not granted benefit of permanency in job, as provided under the provisions of Certified Standing Order and unfortunately, Suresh Thamke died on 21.01.2002 as Badli worker and ceased to be its employee from the date of his death and under the NCWA, permanent employees are entitled for LTC and earned leave and deceased Suresh Thamke was neither qualified for earned leave or LTC, even once during the entire service career and the provisions of providing employment to the dependent of a deceased employee of NCWA do not say that the benefit has to be extended to Badli workers, hence the claim of the applicant was not considered by it and accordingly, he was informed by its letter dated 10/14.06.2006 and as a policy matter, similar decisions had been taken in other identical cases as per the guidelines received from the company and no exception can be made in the case of the applicant and payment of gratuity and CMPF has no bearing on the issue involved in the present reference and its action was justified and legal and the applicant is not entitled to any relief.

4. In support of their respective stands, both the parties have led oral evidence, besides placing reliance on documentary evidence.

The applicant in his evidence on affidavit has reiterated the facts mentioned in the statement of claim. However, in his cross-examination, the applicant has admitted that he is not a member of the union and he has filed and verified the statement of claim and he has not

filed any document to show that he had authorized the union to raise the dispute or that the union had passed any resolution to raise the dispute on his behalf and he does not know as to whether his father had worked for 240 days in a calendar year or not and his father was still a Badli worker at the time of his death and WCL had intimated him that as his father was a Badli worker, no employment could be given to him.

5. One Ramkrishna Singh has been examined as a witness by the Party No. 1. The evidence of the witness for the Party No. 1 on affidavit remained unchallenged, as none appeared on behalf of the applicant to cross-examine him on 31.10.2013, to which date, the case was fixed for cross-examine of the witness for the management. Hence, "No Cross" order was passed. Order was also passed to proceed *ex parte* against the applicant.

6. During the course of argument, it was submitted by the learned advocate for the Party No. 1 that the applicant is not a member of the union and no document has been filed to show that any resolution was passed by the union to espouse the claim of the applicant and applicant has filed and verified the statement of claim, without any authorization from the union and the applicant was not a workman and as such, the reference is not maintainable. It was further contended by the learned advocate for the Party No. 1 that the father of the applicant was appointed as a Badli worker in 1990 and he also died as a Badli worker on 21.01.2002 and he was not given permanency, as he did not complete 240 days of work on surface in any year, since his appointment and the provisions of giving employment to one dependent of the workman, who dies while in service as given in the NCWA are not applicable to Badli worker and such provisions are applicable only to permanent worker and as the father of the applicant was a Badli worker, the applicant is not entitled to any relief.

7. As in his case evidence has been adduced by the applicant in support of his claim, I think it proper to dispose of the reference on merit.

Two points have been raised by the learned advocate for the Party No. 1 to answer the reference in the negative. The first point is regarding the maintainability of the reference. No doubt, the dispute had been raised by the union through advocate, Shri Ishwarkar and the statement of claim has been filed and verified by the applicant, after the reference was made for adjudication of the dispute raised on behalf of the applicant. There is nothing wrong in filing and verifying the statement of claim by the applicant himself. Moreover, advocate Ishwarkar has also signed on the statement of claim. So, for filing of the statement of claim by the applicant, it cannot be said that the reference is not maintainable.

8. At this juncture, I think it proper to mention about the judgment of the Hon'ble Delhi High Court reported in 2000—I-LLJ-196 (Municipal Employees Union Vs. Secretary

(Labour) Government of NCT of Delhi & Another in this regard. The Hon'ble High Court have held that:—

"Industrial Disputes Act, 1947-Sec.2 (k)-Industrial Dispute Definition of word "Person" appearing in section is wide enough to permit any person to raise an industrial dispute when condition of labour is involved.

9. I also think it apropos to mention about the two decisions of the Hon'ble Apex court in this regard. The Hon'ble Apex Court in the decision reported in (2000) 1 SCC-371 (National Engineering Industries Ltd. Vs. State of Rajasthan and others) have held that:—"Industrial Tribunal cannot examine the validity of a reference."

The Hon'ble Apex court in the decision reported in (1984) 4 SCC-392 (Workmen employed by Hindusthan Lever Ltd. Vs. Hindusthan Lever Ltd.) have held that, "Labour and services- Industrial Disputes Act, 1947—Sections 10 & 2 (k) -Once a reference is validly made appropriate Government, Tribunal must adjudicate the dispute on merits- Practice of raising preliminary objections to the reference disapproved."

On perusal of the materials on records and applying the principles enunciated by the Hon'ble courts as mentioned above to the present case in hand. it is found that the reference is maintainable and the reference is to be adjudicated on merits.

10. The second contention raised by the learned advocate for the Party No. 1 was that deceased workman was a Badli worker till his death and such facts have been admitted by the applicant in his cross-examination and temporary, casual and Badli workers are not regular employees of the coal mines, so their dependents are not entitled to get the benefits of compassionate appointment as provided under the NCWA. It was further submitted that compassionate appointment cannot be claimed as a matter of right and such appointment is granted to tide over the financial hardship of the family and it can be granted only, if there is a specific provision provided for the same and as there is no specific provision for providing the benefit of compassionate appointment to the family of a Badli worker, the applicant is not entitled for compassionate appointment.

11. The contention regarding the union having no authority to raise the dispute on behalf of the applicant is concerned, it is found from the pleadings of the parties, the facts that the union had raised the dispute before the ALC on behalf of the applicant and that the Central Government has referred the matter for adjudication and so also the provisions of section 36 (3) of the Act that the union is competent to raise, the dispute.

12. Admittedly, compassionate appointment is not a matter of right. However, this is not a case of providing employment to the applicant on the ground of

compassionate appointment. The applicant has claimed employment on the basis of the provisions of NCWA, which are binding on the Party No. 1. Moreover, the prayer of the applicant to give him employment was rejected by Party No. 1 on the ground that his father was a Badli worker and that the provisions of NCWA are not applicable to Badli worker and not on any other ground including the ground of compassionate appointment. Hence, it is held that there is no force in the contention raised by the learned advocate for the Party No. 1 that the applicant is not entitled for employment.

13. It is clear from the pleadings of the parties, evidence on record and the submissions made by the learned advocates for the parties that the claim of the applicant to give him employment was rejected by the Party No. 1 only on the ground that he being the dependent of a Badli worker is not entitled for employment. So, the only point for consideration is whether the dependent of a Badli worker is entitled for employment as per the provisions of NCWA.

14. It is not disputed that there were and are provisions in NCWAs for giving employment to one of the dependents of a worker, who dies while in service. As on the date of death of Thamke, NCWA-VII was in force, it is necessary to consider as to whether the applicant is entitled for employment as provided in NCWA-VII.

The relevant portions of clause 9.3.0, 9.3.1, 9.3.3 and 9.3.4 of NCWA VII, which are in respect of giving employment to the dependent of a workman, who dies while in service are as follows:

9.3.0:— Provision of Employment of dependants.

9.3.1:— Employment would be provided to one dependant of workers who are disabled permanently and also those who die while in service. The provision will be implemented as follows.

9.3.3:— The dependant for this purpose means the wife/husband as the case may be, son and legally adopted son

9.3.4:— The dependants to be considered for employment should be physically fit and suitable for employment and aged not more than 35 years provided that the age limit in case of female spouse would be 45 years as given in clause 9.5.0. In case of male spouse is concerned, there would be no age limit regarding provision of employment.

It is clear from the above provisions that a dependant of a workman is entitled to employment if the workman dies while in service. The specific word mentioned in the said clause is "workman" and nothing else. It does not specify the category of workman. It also does not say that dependants of Badli workman are not entitled for the benefit of the same. It also does not provide that dependents of Badli worker, who had not done 190/240 days of work in

any calendar year, are not entitled to get the benefit of the provision.

Now, it is to be considered as to whether a Badli worker is a workman or not. NCWA VII does not have any such definition. It is admitted by the parties that the provisions of certified standing orders of the WCL were applicable to deceased Ramdhari. Clause 3 of the certified standing order provides the classification of "Workman". In clause 1 of the said standing order (Commencement and Application), it is mentioned that it shall apply to all workman employed in all units of M/S. Western Coalfields Limited situated in different place in the country which come within the definition of Industrial Employment (Standing Orders) Act, 1945 and include all workmen governed by the National Coal Wage Agreement Section 3.1 of the said Standing Order provides the classification of workman for the purpose of the Standing Order. The same reads as follows:

- (a) Apprentice
- (b) Badli or Substitute
- (c) Casual
- (d) Permanent
- (e) Probationer
- (f) Temporary

The above classification shows that Badli or Substitute employee is also a workman.

When there is no bar either in the NCWA or in the Certified Standing Order to give the benefit of provisions of the NCWA VII to dependants of Badli workman (whether he had done 194/240 days of work in any calendar year or not), the decision of the party No. 1 that the applicant is not entitled for employment is not justified. Hence, it is order:—

ORDER

The action of the management of M/S. WCL in not providing employment to Shri Sachin, the dependant son of late Shri Tamke is illegal and unjustified, The applicant Shri Sachin S/o. Shri Tamke is entitled for employment in accordance with the provisions of the NCWA in force at present. The party No. 1 is directed to give employment to the applicant in accordance with the provisions of NCWA and other rules as applicable within a month of the publication of the award.

J.P. CHAND, Presiding Officer

नई दिल्ली, 3 फरवरी, 2014

कांआ 645.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डब्ल्यू.सी.एल. के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम

न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 52/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03/02/2014 को प्राप्त हुआ था।

[सं. एल-22012/259/2003-आई आर (सी एम-II)]

बी.एम. पटनायक, डेस्क अधिकारी

New Delhi, the 3rd February, 2014

S.O. 645.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 52/2004) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of Central Workshop Tadali of Western Coalfield Ltd., and their workmen, received by the Central Government on 03/02/2014.

[No. L-22012/259/2003-IR(CM-II)]

B. M. PATNAIK, Desk Officer.

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/52/2004

Date: 09.01.2014.

Party No. 1 : The General Manager,
Central Workshop, Tadali,
Western Coalfields Limited,
Post- Tadali, Dist.-Chandrapur. (M.S.)

Versus

Party No. 2 : Shri B.C. Sukhadeve, President,
Sanyukta Khadan Mazdoor Sangh (AITUC)
Br.-Central Workshop Tadali, Post- Tadali,
Dist.-Chandrapur (M.S.)

AWARD

(Dated: 9th January, 2014)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Central Workshop, Tadali of Western Coalfields Limited and their workmen, for adjudication, as per letter No. L-22012/259/2003-IR (CM-II) dated 18.05.2004, with the following schedule:—

"Whether the action of the management in relation to Central Workshop, Tadali of Western Coalfields Limited in denying the wages of Cat. II to S/Shri Navlesh Kumar Sukhdeve, Turner/ Machinist, for the period 29.07.1997 to 06.10.1998, Dinesh Shamrao Bodhane, Moter Mechanic, for the period 29.07.1997 to 06.10.1998 and Pramod Madhao Gandhare, Moter Mechanic for the period 18.07.1997 to 06.10.1998 is legal and justified? If not, to what relief they are entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the union, Sanyukta Khadan Mazdoor Sangh (AITUC), ("the union" in short) on behalf of all the three workmen, namely, S/Shri Navlesh Kumar Sukhdeve, Dinesh Shamrao Bodhane and Pramod Madhao Gandhare, ("the workmen" in short), filed the statement of claim and the management of Central workshop, Tadali of Western Coalfields Limited ("Party No. 1" in short) filed their written statement.

The case of the three workmen as presented by the union in the statement of claim is that it is a registered trade union under the Trade Unions Act, 1926 and party No.1 is a government company and is a "state" within Article 12 of the Constitution of India and the workmen were appointed as apprentices for one year on stipend of Rs. 770/- per month by the management of Ballarpur Area and after medical examination and successful completion of 24 days of vocational training, the workmen were posted at Sasti Colliery vide office order dated 27.07.1996 and they were deployed in production and maintenance jobs as regular employees of party No. 1, due to acute shortage of manpower and party No. 1 on its own interest did not discontinue them from duties, even on completion of one year and issued an office order dated 21/24.07.1997 and there has been practice and system to absorb such apprentices in all the Areas of WCL and to regularize them in time rated category II, after completion of one year of apprenticeship period.

It is further pleaded by the union that the union, RKKMs (INTUC) raised several issues by strike notice with the management of WCL, including the issue of regularisation of 979 apprentices, who had been trained, but not offered appointment after the period of their apprenticeship period and it was pointed out by the RKKMs union that such apprentices had been allowed to continue in Ballarpur and Umrer Areas and a meeting was held between the representatives of RKKMs union and WCL on the issues contained in the strike notice dated 06.07.1998 and it was agreed that, "Such of the apprentices who have completed one year of apprenticeship and the Area Management Has engaged them beyond one year and are still working will be paid difference of Cat. II wages till the date of their continuance." And the minutes so drawn was circulated *vide* reference No.1482 dated 07.07.1998, under the signature of the Dy. Chief Personnel Manager (IR). WCL head quarter, Nagpur.

The further case of the workmen as presented by the union is that party No 1 discontinued the services of the workmen without notice and without payment of the difference of wages of Category II for the period they were allowed to work, beyond the period of one year of apprenticeship *i.e.* from 29.07.1997 to 06.10.1998 to workmen, Navlesh Kumar Sukhdeve and Dinesh Shamrao Bodhane and from 18.07.1997 to 06.10.1998 to workman Pramod

Madhavrao Gandhare and the workmen were engaged again as daily wages workers Category II and were posted at Central workshop, Tadali by order no. 1335 dated 29.12.1998 and the workmen and so also the union approached the party No. 1 time and again for payment of the differential wages, but party No. 1 did not pay the same, even though, other similarly situated employees had been paid the differential wages of category-II and the stipend, as provided under NCWA-VI, which was in operation during the relevant period and there should not be any discrimination by party No. 1 and once such benefit had accrued, the same cannot be withdrawn subsequently even by enactment and the workmen are entitled for the differential wages for the period they were allowed to work after completion of the period of apprenticeship of one year.

3. The party No. 1 in the written statement has pleaded *inter-alia* that the workmen were continued beyond the period of one year of apprenticeship, but they were paid stipend of Rs. 580/- per month and not Rs. 770/- as claimed and they did not raise any objection for their continuance as apprentices after expiry of the apprenticeship period and they had the advantage of getting more experience while working as apprentice and the settlement arrived at by it with RKKMS union is not applicable to the workmen, for the reason that the dispute raised by the said union was in respect of the 127 apprentices, who were discontinued after completion of the apprenticeship period and the facts and dispute raised by RKKMS union were altogether different and the same cannot be applicable to the facts of the present case. It is also pleaded by party No. 1 that the workmen after their discontinuance did not claim regularisation of their services and after few months, there arose clear vacancies and the workmen submitted applications for their appointment and were required to pass a written test for their appointment and in case of regularisation of an apprentice in services, it is not necessary for the said apprentice to pass the written test and as such, the facts of the case of the workmen are altogether different from the facts of the cases raised by RKKMS union and the workmen having passed the written test and their names being included in the seniority list of apprentices, they were given priority in appointment than the other candidates and the workmen did not raise any claim till the time they were confirmed and the claim has been raised as an afterthought and the workmen are not entitled to any relief.

4. In the rejoinder, the union has pleaded that party No. 1 has misinterpreted and misrepresented the facts related to the terms of reference and the workmen were appointed as apprentices for one year on stipend of Rs. 580/- per month, which was subsequently enhanced to Rs. 770/- only per month and the settlement dated 06.07.1998 entered into between RKKMS union and the management of party of No. 1 is squarely applicable to the

workmen and they are entitled for the differential wages for the excess period for which they were allowed to continue, beyond the period of one year of apprenticeship.

5. The union has examined, Shri Babuchand Sukhdev, the President of the union of Central Work shop, Tadali branch and workman Shri Dinesh Shamrao Bodhane as the two witnesses in support of its claim, besides placing reliance on documentary evidence.

No evidence has been adduced by the party No. 1 in support of its claim.

6. In their respective examination-in-chief on affidavit, both the witnesses examined by the union have reiterated the facts mentioned in the statement of claim and rejoinder. In their cross-examination, they have admitted that after one year of apprenticeship of all the three workmen, the period of their apprenticeship continued, but they did not raise any objection to the same and after 06.10.1998, they did not continue as apprentices and for regular appointment of apprentices, management of WCL had prescribed a written examination and the three workmen appeared in the written examination without any objection and as they cleared the examination they were appointed against regular vacancies and the workmen did not raise any objection regarding their appointment on regular vacancies, before accepting the appointment orders.

7. At the time of argument, it was submitted by the learned advocate for the union that it is admitted by the party No. 1 that the three workmen were allowed to continue till 06.10.1998, beyond the period of one year of their apprenticeship and in view of the settlement dated 06.07.1998, between RKKMS union and party No. 1, the workmen are entitled for the differential wages for the excess period they were allowed to continue, after the expiry of the period of one year of apprenticeship.

8. Per contra, it was submitted by the learned advocate for the party No. 1 that it is the admitted case that the workmen were appointed as apprentices and even after connection of one year period of apprenticeship, they continued as apprentices without raising any objection to the same and it is not the case of the workmen that they were assured that after completion of their training as apprentices, they would be absorbed by the management as regular employees and it is clear from the materials on record that the workmen gave their deemed consent by accepting the order of their continuance as apprentices and as there was no contract to provide them regular employment after completion of the period of apprenticeship, they did not have any right to claim absorption in service and as the workmen were discontinued as apprentices and as they applied for employment in response to the advertisement given by the management to fill up the clear vacancies and appeared in the written examination held for the said purpose and as they passed the written examination, they were appointed as regular employees and as there was no settlement between the

three workmen and the management, they are not entitled to any relief.

It was also submitted by the learned advocate for the party No. 1 that the claim raised is a belated claim and the same cannot be entertained and the reference is liable to be answered in the negative.

9. So far the submission made regarding the delay in raising the claim is concerned, it is settled beyond doubt that there is no limitation for raising an industrial dispute, but a labour court may decline to decide a dispute, if due to delay prejudice has been caused. In this case, the party No. 1 in the written statement has not raised any ground of delay in raising the dispute or that due to delay in raising the dispute, any prejudice was caused to it. Hence, the submission made regarding delay in raising the dispute cannot be taken into consideration. Moreover, from the materials on record, it is found that the delay in raising the dispute cannot be attributed to the workmen. Hence, it is found that there is no force in the contention raised by the learned advocate for the party No. 1 on that score.

10. In this cast, almost all the facts are admitted by the parties. According to the party No. 1, the workmen are not entitled for payment of the differential wages, as they did not raise any objection regarding their continuance as apprentices, even after completion of the one year of apprenticeship and as they did not demand for employment after the period of apprenticeship and they applied for employment and appeared in a written test and cleared the same and then they were given appointment and the settlement dated 06.07.1998 between the RKKMS union and the management does not have any application to their cases, as the same was not in respect of them and the facts of their cases and the facts of the cases raised by the RKKMS union were quite different.

However, on perusal of the documents on record including the settlement dated 06.07.1998 in question, it is found that there is no force in the contention raised by the party No. 1 and party No. 1 has tried to complicate the dispute by raising untenable contentions.

Admittedly, the one year of apprenticeship of workmen, Navlesh Kumar and Dinesh Shamrao Bodhane ended on 28.07.1997 and of workman, Pramod Madhavrao Gandhare ended on 15.07.1997 and all the workmen continued as apprentices till 06.10.1998.

On perusal of the settlement dated 06.07.1998, it is found that the dispute of all the apprentices, who have been trained, but not offered appointment after completion of their apprenticeship period in general was raised by the RKKMS Union and not for any particular apprentice or apprentices. It is also found from the said settlement that party No. 1 had introduced a written test to offer appointment to the apprentices and the union had raised objection for such test, but management clarified that the

written test is being conducted with a view to draw a panel of merit list so that trained apprentices are offered appointment on regular basis against sanctioned vacancies. It is also found from the said settlement that the union pointed out that some of the apprentices who have completed their apprenticeship period of one year have been allowed to continue particularly in Ballarpur Area and Umrer Area and are being engaged on production activities and the union demanded their regularization. However, the management of WCL and the union agreed that such of the apprentices who have completed one year of apprenticeship and the Area management has engaged them beyond one year and are still working, will be paid differential of Cat-II wages till the date of their continuance.

The workmen involved in this reference had completed one year of apprenticeship and the Area management had engaged them beyond one year and they were still working on 06.07.1998, The date of the settlement and thereafter also till 06.10.1998. So, the settlement dated 06.07.1998 is squarely applicable to the workmen As already mentioned above that it was the management, who had introduced the written test for the apprentices to give them appointment in the regular vacancies, so the appearing of the workmen in such test and thereafter being given appointment does not make them disentitled for getting the difference of Cat. II wages from the date of expiry of their one year apprenticeship period till 06.10.1998, *i.e.* the date of their continuance. It is also found from the materials on record that though the authority of central workshop Tadali had taken steps to allow the workmen the differential wages as per the settlement mentioned above, no payment was made. Hence, it is ordered:—

ORDER

The action of the management in relation to Central Workshop, Tadali of Western Coalfields Limited in denying the wages of Cat. II to S/Shri Navlesh Kumar Sukhdeve, Turner/Machinist, for the period 29.07.1997 to 06.10.1998, Dinesh Shamrao Bodhane, Moter Mechanic, for the period 29.07.1997 to 06.10.1998 and Pramod Madhao Gandhare, Moter Mechanic for the period 18.07.1997 to 06.10.1998 is illegal and unjustified. The three workmen are entitled to get the differential wages of category-II and stipend of apprentices workmen, Navlesh Kumar Sukhdeve and Dinesh Shamrao Bodhane are entitled to get the differential wages for the period from 29.07.1997 to 06.10.1998 and workman Pramod Madhao Gandhare are entitled to get the differential wages for the period from 18.07.1997 to 06.10.1998. The party No. 1 is directed to pay the differential wages as aforesaid to the three workmen within one month of the date of notification of the award in the Official Gazette, failing which, the amount will carry interest at the rate of 8% per annum.

J. P. CHAND, Presiding Officer

नई दिल्ली, 3 फरवरी, 2014

का०आ० 646.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एफ० सी० आई० के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय न० 2, चण्डीगढ़ के पंचाट (संदर्भ संख्या 164/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03/02/2014 को प्राप्त हुआ था।

[सं० एल-22012/144/2000-आई आर (सीएम-II)]

बी० एम० पटनायक, डेस्क अधिकारी

New Delhi, the 3rd February, 2014

S.O. 646.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Govt. Industrial Tribunal-cum-Labour Court-II, Chandigarh (164/2005) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of FCI and their workmen, which was received by the Central Government on 03.02.2014.

[No. L-22012/144/2000-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sri Kewal Krishan, Presiding Officer

Case No. I.D. No. 164/2005

Registered on 30.7.2005

Sh. Dalbir Singh S/o Sh. Amar Singh, C/o Sh. Krishan Lal,
S/o Raj Kumar Model Town, Bhattu Mandi, District
Fatehbad. ...Petitioner

Versus

The District Manager, Food Corporation of India, Hissar.
...Respondents

Appearances :

For the workman *Ex-parte*

For the Management *Ex-parte*

AWARD

(Passed on 9.1.2014)

Central Government *vide* Notification No. L-22012/144/2000/IR(CM-II) Dated 21.11.2000, by exercising its powers under Section 10 sub-section (1) Clause (d) and sub-section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal:—

"Whether the action of the management of FCI in terminating the services of Sh. Dalbir Singh

S/o Sh. Amar Singh, Security Guard, *w.e.f.* August, 97 is legal and justified? If not, to what relief the workman is entitled?"

In response to the notice the workman submitted statement of claim pleading that he was appointed by a contractor named Aman Security and Detective for the work of Food Corporation of India, Bhattu Kalan, as Security Guard. His services were terminated in August 1997 against the provisions of the Act and he was not paid any compensation though he completed more than 240 days of service. That respondent management is his principal employer and control of the labour vested in it and as such he is the employee of the respondent management. His termination being illegal, he is liable to the reinstated with all the benefits.

Respondent management filed written statement controverting the averments and pleaded that workman was not its employee. It is pleaded that the workman was engaged by a contractor *i.e.* Aman Security and Detective to work as Security Guard under the direct supervision and control of the said agency. He was never appointed by the respondent management. It is also denied that he has completed more than 240 days of service. It is further pleaded that respondent management is not the principal employer of the workman. He is not entitled to any relief.

In support of its case the workman appeared in the witnesses box reiterating the case as set out in the claim petition.

On the other hand the Respondent management led evidence and examined Sh. Vijay Prashar who filed his affidavit supporting the case of the management as set out in the written statement.

The workman was proceeding against ex-parte *vide* order dated 7.2.2013

The respondent management was also proceeding against ex-parte *vide* order dated 7.1.2014.

I have carefully perused the file.

It is the case of the workman himself that he was appointed by a contractor by the name of M/s Aman Security and Detective *i.e.* respondent No. 4 to work as Security Guard for Food Corporation of India. When he was employed by a private agency, he cannot claim that he was an employee of the Food Corporation of India. His plea that he was working under the direct control of the FCI who was his principal employer and as such there was relationship of master and servant. This plea is categorically denied by the FCI. No evidence has come on the file that the workman was actually working under the control and supervision of the FCI.

Thus it is not proved that the workman was an employee of the management of FCI and his services were terminated by the FCI. He is not entitled to any relief and

the reference is answered accordingly. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 3 फरवरी, 2014

का०आ० 647.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14), की धारा 17 के अनुसरण में, केन्द्रीय सरकार एफ० सी० आई० के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय न० 2, चण्डीगढ़ के पंचाट (संदर्भ संख्या 165/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03/02/2014 को प्राप्त हुआ था।

[सं० एल-22012/146/2000-आई आर (सीएम-II)]

बी०एम० पटनायक, डेस्क अधिकारी

New Delhi, the 3rd February, 2014

S.O. 647.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Govt. Industrial Tribunal-cum-Labour Court-II, Chandigarh (165/2005) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of FCI and their workmen, which was received by the Central Government on 03.02.2014.

[No. L-22012/146/2000-IR (CM-II)]

B.M. PATNAIK, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sri Kewal Krishan, Presiding Officer

Case No. I.D. No. 165/2005

Registered on 31.8.2005

Sh. Mani Ram, C/o Krishna Lal, Model Town, Bhattu Mandi, District Fatehabad.

...Petitioner

Versus

The District Manager, Food Corporation of India, Hissar.

...Respondents

Appearances

For the workman *Ex-parte*

For the Management *Ex-parte*

AWARD

(Passed on 9.1.2014)

Central Government *vide* Notification No. L-22012/146/2000/IR(CM-II) Dated 21.11.2000, by exercising its

powers under Section 10 Sub Section (1) Clause (d) and Sub Section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal:—

"Whether the action of the management of FCI in terminating the services of Sh. Mani Ram S/o Sh. Math Ram, Security Guard, *w.e.f.* August, 97 is legal and justified? If not, to what relief the workman is entitled?"

In response to the notice the workman submitted statement of claim pleading that he was appointed by a contractor named Aman Security and Detective for the work of Food Corporation of India, Bhattu Kalan, as Security Guard. His services were terminated in August 1997 against the provisions of the Act and he was not paid any compensation though he completed more than 240 days of service. That respondent management is his principal employer and control of the labour vested in it and as such he is the employee of the respondent management. His termination being illegal, he is liable to be reinstated with all the benefits.

Respondent management filed written statement controverting the averments and realised that workman was not its employee. It is pleaded that the workman was engaged by a contractor *i.e.* Aman Security and Detective to work as Security Guard under the direct supervision and control of the said agency. He was never appointed by the respondent management. It is also denied that he has completed more than 240 days of service. It is further pleaded that respondent management is not the principal employer of the workman. He is not entitled to any relief.

The Workman was proceeding against *ex-parte vide* order dated 7.2.2013

Respondent management led evidence and examined Sh. Vijay Prashar who filed his affidavit reiterating the stand taken by the respondent management in the written statement.

The respondent management was also proceeding against *ex parte vide* order dated 7.1.2014.

I have carefully perused the file.

It is the case of the workman himself that he was appointed by a contractor by the name of M/s. Aman Security and Detective *i.e.* respondent No. 4 to work as Security Guard for Food Corporation of India. When he was employed by a private agency, he cannot claim that he was an employee of the Food Corporation of India. His plea that he was working under the direct control of the FCI who was his principal employer and as such there was relationship of master and servant. This plea is categorically denied by the FCI. No evidence has come on the file that the workman was actually working under the control and supervision of the FCI.

Thus it is not proved that the workman was an employee of the management of FCI and his services were terminated by the FCI. He is not entitled to any relief and the reference is answered accordingly. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 3 फरवरी, 2014

का०आ० 648.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एफ० सी० आई० के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय न० 2, चण्डीगढ़ के पंचाट (संदर्भ संख्या 166/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03/02/2014 को प्राप्त हुआ था।

[सं० एल-22012/142/2000-आई आर (सीएम-II)]

बी०एम० पटनायक, डेस्क अधिकारी

New Delhi, the 3rd February, 2014

S.O. 648.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Govt. Industrial Tribunal-cum-Labour Court-II, Chandigarh (166/2005) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of FCI and their workmen, which was received by the Central Government on 03.02.2014.

[No. L-22012/142/2000-IR (CM-II)]

B.M. PATNAIK, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

PRESENT : SRI KEWAL KRISHAN, Presiding Officer

Case No. I.D. No. 166/2005

Registered on 1.8.2005

Sh. Krishan Lal, C/o Raj Kumar, Model Town, Bhattu Mandi,
District Fatehabad.

...Petitioner

Versus

The District Manager, Food Corporation of India, Hissar.

...Respondents

APPEARANCES

For the workman *Ex-parte*

For the Management *Ex-parte*

AWARD

(Passed on 9.1.2014)

Central Government *vide* Notification No. L-22012/142/2000/IR(CM-II) Dated 21.11.2000, by exercising its powers under Section 10 Sub-Section (1) Clause (d) and Sub-Section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal:—

"Whether the action of the management of FCI in terminating the services of Sh. Krishan Lal S/o Sh. Raj Kumar, Security Guard, *w.e.f.* August, 97 is legal and justified? If not, to what relief the workman is entitled?"

In response to the notice the workman submitted statement of claim pleading that he was appointed by a contractor named Aman Security and Detective for the work of Food Corporation of India, Bhattu Kalan, as Security Guard. His services were terminated in August 1997 against the provisions of the Act and he was not paid any compensation though he completed more than 240 days of service. That respondent management is his principal employer and control of the labour vested in it and as such he is the employee of the respondent management. His termination being illegal, he is liable to be reinstated with all the benefits.

Respondent management filed written statement controverting the averments and pleaded that workman was not its employee. It is pleaded that the workman was engaged by a contractor *i.e.* Aman Security and Detective to work as Security Guard under the direct supervision and control of the said agency. He was never appointed by the respondent management. It is also denied that he has completed more than 240 days of service. It is further pleaded that respondent management is not the principal employer of the workman. He is not entitled to any relief.

In support of its case the workman appeared in the witness box reiterating the case as set out in the claim petition.

On the other hand the Respondent management led evidence and examined Sh. Vijay Prashar who filed his affidavit supporting the case of the management as set out in the written statement.

The Workman was proceeding against ex-parte *vide* order dated 7.2.2013

The respondent management was also proceeding against ex-parte *vide* order dated 7.1.2014.

I have carefully perused the file.

It is the case of the workman himself that he was appointed by a contractor by the name of M/s. Aman Security and Detective *i.e.* respondent No. 4 to work as Security Guard for Food Corporation of India. When he was employed by a private agency, he cannot claim that he was an employee of the Food Corporation of India. His

plea that he was working under the direct control of the FCI who was his principal employer and as such there was relationship of master and servant. This plea is categorically denied by the FCI. No evidence has come on the file that the workman was actually working under the control and supervision of the FCI.

Thus it is not proved that the workman was an employee of the management of FCI and his services were terminated by the FCI. He is not entitled to any relief and the reference is answered accordingly. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 3 फरवरी, 2014

का०आ० 649.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस०सी०सी०एल० के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 19/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 03/02/2014 को प्राप्त हुआ था।

[सं० एल-22012/57/2012-आई आर (सीएम-II)]

बी० एम० पटनायक, अनुभाग अधिकारी

New Delhi, the 3rd February, 2014

S.O. 649.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 19/2012) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the Industrial dispute between the management of M/s. Singareni Collieries Co. Ltd., and their workman, which was received by the Central Government on 03/02/2014.

[No. L-22012/57/2012-IR(CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT
HYDERABAD**

Present : Smt. M. Vijaya Lakshmi, Presiding Officer

Dated the 4th day of December, 2013

Industrial Dispute No. I.D. 19/2012

Between:

The Vice-President,
(Sri Bandari Lingaiah)
Singareni Collieries Employees Union (CITU),
Qtr. No. 39-T, Somagudem Corner,
Somagudem (Via Bellampally)
Andhra Pradesh-504 251

....Petitioner

AND

The Chief General Manager,
M/s. Singareni Collieries Company Limited,
Mandamarri Area, Mandamarri,
Adilabad district-504231.Respondent

APPEARANCES:

For the Petitioner: NIL

For the Respondent: Representative

AWARD

The Government of India, Ministry of Labour by its order No. L-22012/57/2012-IR (CM-II) dated 26.4.2012 referred the following dispute between the management of M/s. Singareni Collieries Company Ltd., and their workman under Section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal. The reference is,

SCHEDULE

"Whether the action of the General Manager of M/s. Singareni Collieries Company Ltd., Mandamarri Area, in terminating the services of Sri Mahadevi Mondhi, Ex-Coal Filler, MK-4 Incline, Mandamarri Area, with effect from 8.2.2008 is fair and justified? To what relief the concerned workman is entitled to?"

The reference is numbered in this Tribunal as I.D. No. 19/2012 and notices were issued to the parties.

2. The case stands posted for appearance of Petitioner union and for filing of claim statement and documents.

3. Petitioner union called absent and there is no representation. In spite of receiving the notice again and again Petitioner union is not appearing before the court and is not making any claim. In the circumstances, taking that Petitioner union is not interested in the proceedings, proceedings are closed. As such a 'Nil' Award is passed.

Award passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant transcribed by her and corrected by me on this the 4th day of December, 2013.

M. VIJAYA LAKSHMI, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 3 फरवरी, 2014

कांआ 650.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डब्ल्यू.सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 53/1991) को प्रकाशित करती है जो केन्द्रीय सरकार को 03/02/2014 को प्राप्त हुआ था।

[सं एल-22012/27/1991-आई आर (सीएम-II)]

बी.एम. पटनायक, डेस्क अधिकारी

New Delhi, the 3rd February, 2014

S.O. 650.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 53/91) of the Cent. Govt. Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of WCL and their workman, received by the Central Government on 03/02/2014.

[No. L-22012/27/1991-IR(CM-II)]

B.M. PATNAIK, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR**

No. CGIT/LC/R/53/91

Presiding Officer: Shri R.B. PATLE

The Secretary,
R.K.K.M.S. (INTUC),
Post Chhindwara

....Workman/Union

Versus

The Manager,
Nandan Mine No. 2 of WCL,
Post Nandan,
Distt. Chhindwara

....Management

AWARD

(Passed on this 23rd day of January, 2014)

1. As per letter dated 3-4-91 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-22012/27/91-IR (Coal-II). The dispute under reference relates to:

"Whether the action of the Manager, Nandan Coal Mine No. 2 of Western Coalfields Ltd., Kanhan Area, P.O. Nandan, Distt. Chhindwara (MP) is justified in dismissing from the services of Shri Puran S/o Chokhe, tub loader, Token No. 328 and other thirteen (13) workmen of Nandan Coal Mine No. 2, WCL, Kanhan Area, P.O. Nandan, Distt. Chhindwara (MP)

as per the dates shown against the name of each workman in the attached list as Annexure-I? If not, to what relief the concerned workers are entitled to?"

2. After receiving reference, notices were issued to the parties. Statement of claim is submitted by Secretary, Rashtriya Koyla Khadan Mazdoor Sangh (INTUC) on behalf of 14 employees. Case of list party Union is that it is registered under Trade Union Act for welfare of labours employed throughout WCL. Union is challenging dismissal of Shri Puran and 13 others were employed in Nandan Coal Mines No. 2 discharging their duties. The dates of their appointments, token number, designation are given in Para-4 of the statement of claim. That management had not provided quarter to those employees. Employees were living in colliery area without their families far away from their village. 14 employees were charge-sheeted for absence from duty. Enquiry Officer and Management Representative were appointed, departmental enquiry was conducted. Except Shri Puran and Bansilal, all other employees have participated in the enquiry. Those employees being illiterate and from backward community, they did not contest allegation against them seriously. Charges were admitted. On basis of the formal enquiry, their services have been dismissed imposing harsh and excessive punishment. The date of dismissal of respective employees are shown in chart below Para-8. Employees were mostly dismissed in August, September, October, November-88, January to March-89. It is further pleaded that the co-worker was not given chance to cross-examine management's witnesses. The employees have not furnished documents about their absenteeism. The names and list of witnesses were not supplied. The procedure adopted in Enquiry Proceeding therefore is illegal. Enquiry Officer had no knowledge how to conduct Departmental Enquiry, Enquiry Officer was biased. the dismissal orders are challenged. That the Mine Manager has no power to dismiss employees from service. The General Manager is, therefore, Disciplinary Authority and competent to dismiss them from service. That employees have to face their domestic problems. Their wife and their employees themselves were sick. On such ground, it is submitted that the punishment of dismissal was illegal.

3. IInd party filed Written Statement at Page 6/1 to 6/4. IInd party submits that termination of each of employee is on the basis of independent facts. There is nothing common in termination of services of all those employees. There cannot be combined reference in respect of termination of individual employees. Combined reference is not permissible under law. The dispute under reference should be very specific and should not be vague. Central Govt. acted mechanically without application of mind while making the reference. The reference is bad in law because there was no termination of service of Shri Puran and 12 others as alleged. Their employment commences on the day of employment and totally comes to an end at the end of the day. The reference is liable to be rejected.

4. IInd party further submits that in case of Puran, he was in habit of remaining absent without leave or prior permission, he did not show any interest to continue the work. Repeated efforts were made to persuade him to do his job properly. All the warnings not resulted in any action. On 17-12-87, chargesheet was issued to him as he was absent without prior permission from 16-10-85 to 16-12-87. Shri Puran has not participated in the inquiry. Enquiry Officer examined witnesses of management, found him guilty submitting his findings. After receiving findings of Enquiry Officer, Shri Puran was terminated *vide* letter dated 24-8-88. It is also submitted if enquiry is found vitiated, management be granted permission to prove misconduct adducing evidence. That the dispute is raised belatedly. There is no question of giving backwages to the workman. Separate Written Statement are filed with respect to employees Shri Sukhlal, Patiram, Shivcharan, Lukhman, Dhandoo, Laxman, Suresh Kumar, Bisatlal, Bisram, Shankar, Fakirchand, Somlal, Khushilal, showing different period of their unauthorized absence and notices issued to them.

5. Management filed separate rejoinder with respect to all employees reiterating its contentions in Written Statement. In Para-8, date of dismissal of each employee are shown separately. The chart is submitted about participation of employees, admission of charge. As per said chart, Shri Sukhlal-S/o Dhandu, Chintaman-S/o Fakirchand, Bisatlal-S/o Dashrath, Bishan-S/o Bhangi, Shanker-S/o Rambharose and Laxman-S/o Shival admitted charge against them. Charge against Pooran-S/o Chokhe, Suresh S/o Banshilal, Somlal S/o Sumersingh, Ratilal S/o Ujjain, Khushilal S/o Phoota, Lukman S/o Baji, Shivcharan S/o Ghudan and Dhandoo S/o Shanker were proved in the enquiry. IInd party management submits that action of dismissal from service of all those employees is legal and justified.

6. The preliminary issue No. 1 is decided as per order dated 6-6-2013, enquiry conducted against workman is found fair and proper. Parties were given opportunity to adduce evidence on other issues. Considering pleadings and order on preliminary issue, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

- | | |
|--|--------------------|
| (i) Whether the charge of alleged misconduct against workman is proved from evidence in Enquiry Proceedings? | In Affirmative |
| (ii) Whether the punishment of dismissal from service imposed against Shri Puran and 12 other employees by management of IInd party is proper and legal? | In Affirmative |
| (iii) If so, to what relief the workman is entitled to?" | As per final order |

REASONS

7. The evidence of management's witness Shri Sunil Kumar Jain remained unchallenged. The charges were admitted by some of the employees. In the individual rejoinder filed by management has discussed about how other employees participated in the enquiry and the charges were proved against them. The record of Enquiry Proceeding is produced. Though the Union has filed the Statement of Claim in the matter under reference, no witness is examined by the Union of the individual employee. The zerox copies of the Enquiry Proceedings with respect to all employee is produced.

8. As stated above enquiry conducted against workman is found legal as per order dated 6-6-2013. Record shows that statement of Management Representative was recorded on the point that those were unauthorisely absent. Copies of register of leave account are produced. The workman absolutely not participated in the reference, some of them have admitted the charges against them and charges against some of them have been proved in the Enquiry Proceedings. The careful perusal of record shows unauthorized absence of the employees extends from 3 months of 13 months. Absolutely no evidence is adduced by the 1st party employee what were the reasons for their absence, whether absence from duty was deliberate or motivated. In absence of such evidence, it would not be appropriate on my part to interfere in the order of dismissal. For above reasons I record my findings in Point No. 1 & 2 in Affirmative.

9. In the result, award is passed as under:—

- (1) The action of the Manager, Nandan Coal Mine No. 2 of Western Coalfields Ltd., Kanhan Area, P.O. Nandan, Distt. Chhindwara (MP) is justified in dismissing from the services of Shri Puran S/o Chokhe, tub loader, Token No. 328 and other thirteen (13) workmen is proper.
- (2) The employees are not entitled to relief prayed by them.

R.B. PATLE, Presiding Officer

नई दिल्ली, 3 फरवरी, 2014

का.आ. 651.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डब्ल्यू.सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 20/2006) को प्रकाशित करती है जो केन्द्रीय सरकार को 03/02/2014 को प्राप्त हुआ था।

[सं. एल-22012/248/2001-आई आर (सी-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 3rd February, 2014

S.O. 651.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 20/2006) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of WCL of Kanhan Area and their workman, received by the Central Government on 03/02/2014.

[No. L-22012/248/2001-IR(C-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR**

No. CGIT/LC/20/2006

Presiding Officer: Shri R.B. PATLE

The President,
P.K.K.K. Karamchari Sangh,
Damua, P.O. Damua,
Chhindwara

....Workman/Union

Versus

Chief General Manager,
WCL, Kanhan Area,
PO Dungaria, Chhindwara

....Management

AWARD

(Passed on this 21st day of January, 2014)

1. As per letter dated 5-6-2006 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-22012/248/2001-C-II. The dispute under reference relates to:

"Whether the action of the management of Damua Colliery for termination of Shri Jhangal Lal, S/o Shri Bhagan and 12 others water carrier *w.e.f.* 11-4-98 is legal and justified? If not, to what relief the workman is entitled to?"

2. After receiving reference, notices were issued to the parties. Ist party Union filed Statement of Claim at Page 3/1 to 3/10. The case of Ist party Union is that 13 workmen-names given in Para-3 of the Statement of Claim were employed on job of water career, Category-I from 1-1-1980 as per Bipartite Agreement/National Coal Wage Agreement. That their service conditions are covered as per the Bipartite Settlement which are statutory contract. That qualification of workman made as per clause 3(1) of certified standing orders. All those workmen are entitled to be regularized as permanent workmen with retrospective effect. That on inactment of coal mines nationalization Act 1973, rights and interest of Private collieries were present in Central Govt. the workmen are employees of the Central Govt. Their service conditions are covered by certified standing orders.

Clause 3.5 of certified standing orders provides classification of workman — (a) Apprentice, (b) Badli/ substitute, (c) Casual, (d) Permanent, (e) Probationer, (f) Temporary. Ist party workman has given definition of all those categories of employees. Permanent workmen I who is employed on job of permanent nature for a period of atleast six months or who has satisfactorily put six months continuous service in a permanent post as a probationer. The wages structure, nomenclature, job description and categorization of coal employees was made in meeting dated 29th, 30th April and 28th August 1986. The water career is designated at Sl. No. 8, that the wage structure, nomenclature, job description and categorization alongwith others conditions of service including fringe benefits of the employed persons in the Coal Industry are covered under the recommendation of the Central Wage Board for Coal Mining Industry. That workman while working in Damua Colliery on job of water career, they were terminated from 6-4-98 by General Manager, WCL.

3. That Shri Abdul Haquim was posted as Welfare Officer-cum-Sr. Personnel Officer in Damua Colliery. His evidence was adduced in C/153/86 is reproduced. The evidence of Shri M.M. Chandok, Abdul Hakuim is also reproduced. The cross-examination by Union Representative Shri D.N. Tripathi of witness in said reference including Shri Nokhelal is reproduced in the statement of claim. Cross-examination of the witnesses by Advocate for management is reproduced. Ist party Union prays for award in favour of the water career *w.e.f.* 1-11-1980 with wages and other benefits.

4. Management filed Written Statement denying claim of the Union that Shri Jhangalal and 12 others mentioned in the Statement of Claim have never issued appointment orders, work orders. There was no question of termination of their service. Employer employee relationship does not exist between the parties. That claim of Ist party workman is false. That no appointment order or agreement was entered between WCL management and those employee. In absence of any agreement, question of working in control or supervision of management does not arise. It is further contented that there is a practice of some persons being used to supply drinking water in colliery does not hold merit as a number of persons are engaged on and off for supply of various miscellaneous material such as good grains, milk, water etc. It does not mean there exists a relation of employer-employee. All other contentions of workman is denied. So far as evidence of the witnesses and cross-examination by counsel for management is reproduced, it is submitted that it relates to other matter and has no relevancy.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under.

My findings are recorded against each of them for the reasons as below:—

- | | |
|---|--|
| (i) Whether the action of the management of Damua Colliery for termination of Shri Jhangalal Lal, S/o Shri Bhagan and 12 others water carrier <i>w.e.f.</i> 11-4-98 is justified? | In Affirmative |
| (ii) If not, what relief the workman is entitled to?" | Workmen are not entitled to relief prayed by them. |

REASONS

6. Though in Statement of Claim submitted by workman, it is pleaded that all 13 workmen names given in para-3 of the statement of claim are working as water career from 1-1-80 and their services are covered by Bipartite Settlement, NCWA. It is also pleaded about categorization of workmen, details given in Para-3/1. The definition of badly/casual, temporary workmen given and on its basis for status of permanent workmen is claimed. Workman did not participate in the reference proceeding. No evidence is adduced by Ist party. The evidence of Ist party has been closed on 19-6-2012. The documents produced by Ist party are admitted, Exhibit W-1 is copy of letter about forwarding reference order, W-2 is copy of reference order. W-3 is copy of letter of Chief General Manager about deployment to bullock cart for carrying water. Exhibit W-4 is copy of affidavit of evidence of A.B. Hakim and his cross-examination in Case No. 153/86. Copy of affidavit of M.M. Chandok with cross-examination in same case produced at Exhibit W-5. Copy of evidence of Nokhelal with cross-examination is produced at Exhibit W-6. W-7 is receipt of water transport charges. W-8 is payment voucher of water charges.

7. The evidence recorded in C/153/86 produced on record relates to the working of water carriers. The said claim was of 1986. Any document is not produced what was the subject matter in C/153/86. At the time of argument, learned counsel for management Shri A.K. Shashi submitted that said reference related to recovery of wages. In present cases, all workmen are claiming to be continuously working as water carrier from November 1980 and as per nomenclature of workman and Bipartite settlement, they claimed to be permanent employee. The copy of nomenclature job description and categorization of employees is denied by the management. Ist party Union did not participate to adduce evidence on the point. Management filed affidavit of evidence of witness Shri Milind Ganvir. He had stated that appointment in the colliery can only be done according to rules laid down by the company public sector. No back door entry is permissible. His evidence become unchallenged. As Union

has failed to adduce evidence, its claim under reference cannot be accepted. Rather it is not substantiated by cogent evidence. As such I record my findings in Point No. 1 in Affirmative.

8. In the result, award is passed as under:—

(1) Action of the management of Damua Colliery for termination of Shri Jhangalal Lal, S/o Shri Bhagan and 12 others water carrier *w.e.f.* 11-4-98 is legal.

(2) Workmen are not entitled to relief claimed by them.

R. B. PATLE, Presiding Officer

नई दिल्ली, 3 फरवरी, 2014

कांआ 652.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डब्ल्यू.सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 65/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03/02/2014 को प्राप्त हुआ था।

[सं. एल-22012/1/2011-आई आर (सीएम-II)]

बी.एम. पटनायक, डेस्क अधिकारी

New Delhi, the 3rd February, 2014

S.O. 652.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 65/2011) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of WCL Pench Area Praceya Distt. Chhindwara and their workmen, received by the Central Government on 03/02/2014.

[No. L-22012/1/2011-IR(CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/65/2011

Presiding Officer: SHRI R. B. PATLE

Shri Bharat Singh,

General Secretary,

Samyukta Koyla Mazdoor Sangh (AITUC),

Eklehra, Chhindwara

...Workman/Union

Versus

Chief Manager,

WCL, Pench Area,

Parasiya, Distt. Chhindwara

...Management

AWARD

(Passed on this 21st day of January 2014)

1. As per letter dated 24-6-2011 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-22012/1/2011-IR(CM-II). The dispute under reference relates to:

"Whether the action of the management of M/s. Western Coal Fields in terminating the service of Shri Ramchander, Tub Loader *w.e.f.* 16.9.2009 is legal and justified? To what relief the workman concerned is entitled to?"

2. After receiving reference, notices were issued to the parties. Reference pertains to termination of service of Shri Ramchander, Tub Loader *w.e.f.* 16.9.2009 and its legality. After notice, workman submitted application that he has attained age more than 60 years. He is not keeping well. He does not intend to prosecute the claim under reference. Workman also filed affidavit in support of above application. The management has given no objection for disposing the reference as per request of the workman.

3. I am satisfied that the workman is not desiring to prosecute claim under reference and management has no objection for it. Therefore the dispute under reference cannot be adjudicated on merit for want of prosecution. The reference stands disposed off.

R. B. PATLE, Presiding Officer

नई दिल्ली, 3 फरवरी, 2014

कांआ 653.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस.ई.सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 105/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03/02/2014 को प्राप्त हुआ था।

[सं. एल-22012/360/2003-आई आर (सीएम-II)]

बी.एम. पटनायक, डेस्क अधिकारी

New Delhi, the 3rd February, 2014

S.O. 653.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 105/2004) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of SECL, Gevra Area, and their workmen, received by the Central Government on 03/02/2014.

[No. L-22012/360/2003-IR(CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR****NO. CGIT/LC/R/105/2004**

Presiding Officer: SHRI R. B. PATLE

Shri Ram Vilas Shobnath,
General Secretary,
Chhattisgarh Khadan Kharkhana Mazdoor Union,
Village & PO - Bankimongra,
Distt. Korba (Chhattisgarh)Workman/Union

Versus

Chief General Manager,
SECL, Gevra Area,
PO- Gevra Project,
Distt.- Korba (Chhattisgarh) ...Management

AWARD

(Passed on this 23rd day of January 2014)

1. As per letter dated 4-1-2004 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-22012/360/2003-IR(CM-II). The dispute under reference relates to:

"Whether the action of the management of SECL, Gevra in not paying the wages of Shri Prem Das, Clerk for the period from 1.8.1998 to 31.12.1998 (5 months) is legal and justified? If not, to what relief the workman is entitled?"

2. After receiving reference, notices were issued to the parties. Ist Party Union filed Statement of Claim at Page 6/1 to 6/4. The case of Ist party Union is that workman Premdas was working in Gevra Project as clerk. He was paid monthly salary Rs. 8683/-. Workman was Vice President of Union. It is alleged that workman was subjected to harassment. As per notice dated 13.1.1997, workman had threatened to commit suicide pressing his demands for payment for the month August to December 1998. That salary should be paid as per settlement dated 30.4.1995 and order passed by Hon'ble High Court of post of Clerk Grade-I. Workman had prayed for promotion in Special Grade from 1.1.1997. Workman had filed contempt petition in High court alleging disobedience of the order dated 19.11.1999, 17.12.1999. That the matter of promotion was pending before CGIT, Nagpur. Workman has also referred to various settlements. That his pay was with held. He further alleged that false chargesheet was issued to him for unauthorized absence. Showcause notice was issued to him on 6.8.1999. There was no allegation against him for the period 1.8.1998 to 31.12.1998. The order was passed no work no pay on false allegation. On such ground, workman is praying that he is entitled to salary fo the period 1.8.1998 to 31.12.1998.

3. IInd party filed Written Statement at page 9/1 to 9/5, claim of workman is denied. The dispute is raised in 2004 after lapse of several years is not tenable. IInd party submits that workman was employed as clerk. Workman was in habit of leaving duty without intimation, permission of Controlling Authority, he used to leave office during duty hours, he refused to obey orders of Controlling Authority. Sometimes after making attendance, he leave the work place. Workman refused to do any work during his working hours. The workman was not paid wages following principles of no work, no pay, showcause notice was issued on 6.8.1999. He was also issued showcause notice dated 17.10.1990. Workman was not paid wages for the period August 1998 to December, 1998. It is not disputed that workman was working as clerk in Gevra Project of SECL. IInd party denies that action of the management is illegal. All other contentions of the workman are denied. The management never forced workman to arrive at settlement at any time. IInd party admits that he was not paid wages from August to December, 1995 as the workman was not performing job during the period. IInd party prays for rejection of the claim.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

- | | |
|---|--|
| (i) Whether the action of the management of SECL, Gevra in not paying the wages of Shri Prem Das, Clerk for the period from 1.8.1998 to 31.12.1998 (5 months) is legal and justified? | In Affirmative |
| (ii) If not, what relief the workman is entitled to?" | Workman is not entitled to relief prayed by him. |

REASONS

5. Present reference relates to non-payment of salary for August, 1998 to December, 1998 by management. Workman submits that he was subjected to harassment by IInd party. His pay was withheld illegally. Management denies allegation of workman. It is submitted that workman was not performing duty during working hours, he was not obeying directions of the Controlling Authority. Workman has not participated in the reference proceeding after filing Statement of Claim by Union. Workman is proceeded ex parte on 9.4.2012. As such there is no evidence to substantiate claim of workman. Management filed affidavit of evidence of Shri K.A. Sunder supporting most of the contentions of the management. The salary of workman from August 1998 to December, 1998 was not paid following principles of no work, no pay. The evidence of workman remained unchallenged. Union/Ist party workman did not participate in the reference proceeding. I do not find reason to disbelieve evidence of the management's witness that

salary of workman was not paid following principles of no work, no pay cannot be said unjustified. For above reasons, I record my finding in Point No. 1 in Affirmative.

6. In the result, award is passed as under:—

(1) Action of the management of SECL, Gevra is not paying the wages of Shri Prem Das, Clerk for the period from 1.8.1998 to 31.12.1998 (5 months) is legal and proper.

(2) Workman is not entitled to relief prayed by him.

R.B. PATLE, Presiding Officer

CORRIGENDUM

New Delhi, the 4th February, 2014

S.O. 654.—The Name of the Party-2 mentioned in case No. CGIT/NGP/64/2005 dated 20.11.2012 Notified vide No. L-22012/348/2004-IR(C-II) dated 03.12.2012 may be

Read as:

The General Secretary,
Koyala Shramik Sabha (HMS),
C/o C.J. Khandre,
Near Mahakali Mandir,
CHANDRAPUR (M.S.)

Instead of :

Shri Lomesh Maroti Khartad,
President, National Colliery Workers Congress,
Ambedkar Ward, Ballarpur
Tah. & Distt. Chandrapur (MS)

The above correction is made as per order No. 36 dated 11/1/2013 of CGIT-cum-Labour Court, Nagpur.

[No. L-22012/348/2004-IR(C-II)]
B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/64/2005 Date-20.11.2012.

Party No. 1 : The Sub Area Manager,
Hindusthan Lelpeth Mine No. 1
Western Coalfields Limited,
Chandrapur

Versus

Party No. 2 : The General Secretary,
Koyla Shramik Sabha (HMS),
C/o C.J. Khandre,
Near Mahakali Mandir,
Chandrapur (M.S.)

AWARD

(Dated: 20th November, 2012)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of

Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Hindustan Lalpeth Mine No. 1 of WCL and Smt. Laxmi, the dependent of deceased workman, Pocham Kondaya Bogaram for adjudication, as per letter No. L-22012/348/2004 IR (CM-II) dated 03.08.2005, with the following schedule:—

"Whether the action of the management of Chandrapur Area of WCL in treating Sh. Pocham Kondaya Bogaram, Badli Underground Loader even after completion of 190 days attendance within one year of his joining service as a Badli Loader was legal and justified in terms of clause 3.3 of the Certified Standing Orders of WCL? If not to what relief workman was entitled?"

2. "Whether the action of the management in denying following benefits to the workmen/dependents is legal and justified? If not, to what further relief the dependent of the concerned workman is entitled? (i) Employment of the dependent of Late Sh. Pocham Kondaya Bogaram as per para 9.3.1 of the NCWA-VI. (ii) Benefits under the CMPF Scheme 1948. (iii) Benefits under the Life cover Scheme as per para 9.1.0 of the NCWA-VI. (iv) Leave with wages as per sec. 25(3) (a) and 52(10) of the Mines Act, 1952."

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the union "Koyla Shramik Sabha (HMS)" ("the union" in short) filed the statement of claim on behalf of Smt. Laxmi, the dependent of deceased workman, Pocham Kondaya Bogaram (The "deceased workman" in short) and the management of WCL (here-in-after referred to as the Party No. 1") filed its written statement.

The case as projected by the union in the statement of claim is that the deceased workman, was working as a loader since long at Nandgaon Incline colliery of WCL on continuous basis, but party No. 1 was showing him as a worker engaged by contractor, so an industrial dispute was raised by RKKMS (INTUC) on behalf of the deceased workman, before the ALC (C), Chandrapur and there was a tripartite settlement before the ALC on 25.05.1992 and basing on such settlement, party No. 1 issued an appointment letter bearing No. 1523 dated 15.05.1996 in favour of the workman as a fresh "Badli" piece rated loader and posted him at Hindusthan Lalpeth Underground Coal Mine No.1 and the deceased workman worked there on and from 11.05.1996 continuously and during his employment, he became ill and referred to Tata Cancer Hospital, Mumbai by party no. 1 for treatment and then to Government Medical College Hospital, Nagpur vide letter no. 1065 dated 11.08.1997 of the Chief Medical Officer, Chandrapur Area Hospital, WCL and during the period of

treatment, he died on 03.10.1997 at Lalpeth and party no. 1 was intimated about the death of the workman, Pocham and on receipt of the death certificate of the deceased workman, the Manager, Hindusthan Lalpeth Colliery Mine No. 1, Chandrapur *vide* office order no. 2302 dated 23/27.10.1997, removed his name from the rolls of the said colliery *w.e.f.* 04.10.1997 and Smt. Laxmi, the widow of deceased workman represented for her employment, as the dependent to party No. 1, soon after the death of her husband. It is further pleaded by the union that the deceased workman had completed 282 days of work from June, 1996 to July, 1997 and 254 days of work from June, 1996 to May, 1997 and on receipt of the application of Smt. Laxmi and after due verification, the Personnel Manager, Hindustan Lalpeth underground sub-area, recommended her case for employment as dependent of deceased workman *vide* his letter dated 04.05.1999 and again *vide* his letter dated 6/6.05.1999 to the Deputy Chief Personnel Manager, Chandrapur Area, WCL and Smt. Laxmi and the union approached party No. 1, a number of times for payment of the dues of the deceased workman, such as, leave wages, amount on account of Life Cover Scheme, CMPF amount, Pension, Gratuity etc. and so also employment and interim monetary compensation, but party No. 1 did not consider the same and Smt. Laxmi submitted a letter dated 29.01.2004/12.02.2004 to the Chief General Manager, Chandrapur Area with copies to the Director (P) and CMD, WCL, Nagpur, reiterating her claim, but nothing was done in the matter and the matter was also taken by the union, *vide* letter no. 2004 dated 14.02.2004 and letter dated 30.06.2005, but the same were not considered, so the union took up the case with ALC (C) Chandrapur *vide* letter dated 25.02.2007 and the reference was made to the Tribunal for adjudication.

The union has prayed for payment of Rs. 3000/- with 18% compound interest from 04.12.1997 till the actual payment is made, the dues due to the workman and dues due to the death of the workman and employment to Smt. Laxmi 3. The party no. 1 in their written statement have pleaded *inter-alia* that the deceased workman was appointed as Badli piece rated loader at Hindustan Lalpeth underground sub-area *vide* order dated 04.05.1996 and the workman joined duties on 11.06.1996 and the said appointment was for specific period up to 31st July, 1996 and after 31st July, 1996, no further order of appointment or extension of the appointment was issued in his favour and the deceased workman died on 03.10.1997 and on the date of death, the deceased workman was not holding any appointment order and he was never taken on probation and his services were also never regularized as permanent employee and during the life time of the deceased workman, there was no grievance or request for regularisation of his services and no document has been placed on record to show that deceased workman was a member of the union and the subject matter involved in reference does not constitute an industrial dispute as

contemplated under section 2-K of the Act and the reference is not within the jurisdiction of this Tribunal and the reference is not tenable and bad in law. It is further pleaded by party No. 1 that the days for which the deceased workman worked beyond 31.07.1996 were essentially of temporary nature and wages for the same were paid to him on daily basis and therefore, the deceased workman had no claim whatsoever for permanency/regularisation and the selection of the deceased workman was not made after following the due procedure and on that count also, the deceased workman was not entitled for regularisation and the deceased workman had not put in 190 days of work in any one year, much less calendar year and therefore, the deceased workman was not entitled to claim any benefits of leave etc. as per section 52 (10) of the Mines Act, 1952 and though the deceased workman was not a regular employee, they displayed all the good gesture to treat him medically on humanitarian and social grounds and since the deceased workman had not achieved the status of a regular employee, he was not entitled for any benefits applicable to regular employee and they have already paid all the legal claims payable to the deceased workman and a sum of Rs. 20,000/- was paid to Smt. Laxmi *vide* Cheque No. 340129 dated 20.12.1997 towards Life Cover Scheme and due amount of Provident Fund has also already been paid and as the deceased workman was only a Badli employee at the time of his death, the claim of his wife for appointment on compassionate ground could not be considered and the claim is neither legal nor justified and therefore, the reference is to be answered in negative.

The further case of party No. 1 is that the deceased workman was not entitled for any gratuity, much less as claimed and the claim of gratuity is also beyond the terms of reference made by the Government and the claim of Smt. Laxmi for compassionate appointment was not considered, since her claim was not in accordance with the rules and the dispute has been raised by the wife of the deceased workman and there is no provision in the Act, which permits raising of an industrial dispute by a union at the instance of a relative of an employee and on this ground also, no valid industrial dispute exists and therefore, the reference is liable to be answered in-favour of the management and against the union.

4. In the rejoinder, it is pleaded by the union that as the reference has been made by the competent government after finding of the existence of an industrial dispute, the same is maintainable and the Tribunal has the jurisdiction to decide the same and Badli worker also falls within the definition of workman and therefore, they are entitled for the benefits under all industrial law and claim of appointment on compassionate ground is maintainable under the Act.

5. To prove their respective claims, both the parties have led oral evidence, besides placing reliance on documentary evidence. Shri Chandrakanta Khande, the

General Secretary of the union and Smt. Laxmi, the widow of the deceased workman has been examined as the two witnesses on behalf of the union.

One, Shri Bhagwan, Senior Manager (Personnel) of Hindustan Lalpeth Sub-Area has been examined as a witness on behalf of Party No. 1.

6. Shri Chandrakanta Khande in his examination-in-chief, which is on affidavit has reiterated the facts mentioned in the statement of claim. However, in his cross-examination, this witness has stated that the deceased workman was as appointed as a Badli piece rated loader and such appointment was upto 31.07.1996 and except Ext. W-XV, no other document has been filed to show that the service of the deceased workman was extended after 31.07.1996.

Smt. Laxmi in her evidence has also reiterated the facts mentioned in the statement of claim, but in her cross-examination, she has stated that she has no knowledge about National Coal Wages Agreement, Standing Orders and other Rules and regulation of WCL and her husband worked for one year.

7. The evidence of the witness for the party No. 1 is also the reiteration of the facts mentioned in the written statement. In his cross-examination, the witness has admitted that the deceased workman, Pocham died while he was working as a Badli worker and wages was paid to him from the date of his appointment till his death and Ext. M-VI is the attendance particular of the deceased workman for 1996 and 1997.

8. Before delving into the merit of the matter, it is to be mentioned that at the time of argument, it was submitted by the learned advocate for the petitioner that the benefits other than the benefit of employment have already been granted to Smt. Laxmi, so there is no need for adjudication of the same. Such facts have also been admitted by the parties in the written statement and evidence adduced before this Tribunal.

So the points remain for consideration are regarding the legality or otherwise of treating the deceased workman as a "Badli" worker even after completion of 190 days attendance within one year and not giving of compassionate appointment to Smt. Laxmi, the widow of the deceased workman.

9. The first question raised by the learned advocate for party No. 1 is that the Tribunal has no jurisdiction to decide the reference as because the dispute raised by the union on behalf of Smt. Laxmi, the widow of deceased workman is not an industrial dispute as defined under section 2 (K) of the Act and as such, the reference is bad in law.

On the other hand, it has been submitted by the learned advocate for the petitioner that once a reference has been validly made by appropriate Government, the

Tribunal must adjudicate the dispute on merits and the Tribunal cannot go into the validity of the reference and the expanding definition of "workman" as contained in section 2 (S) of the Act would confer a right upon the dependent to obtain appointment on compassionate ground and provision for giving employment to the dependent of an employee who dies in harness is a condition of service in view of the settlement entered into by and between the employer and the employees and a claim for appointment on compassionate ground is an industrial dispute and as such, the reference is not bad in law and the Tribunal has jurisdiction to adjudicate the dispute so referred.

In support of such contentions, the learned advocate for the petitioner placed reliance on the decisions reported in 1984 (4) SCC-392 (Workmen employed by Hindustan Liver Ltd. Vs. Hindustan Liver Ltd.), AIR 2000 SC-469 (National Engineering Industries Ltd. Vs. State of Rajasthan), 2007 (115) FLR-427 (Mohan Mahto Vs. M/s. Central Coal Fields Ltd.), 1993 (1) BLJ-52 (Employees of M/s. BCCL Vs. Their Workmen) and 2000-I-LLJ-196 (Municipal Employees union Vs. Secretary (Labour), Govt. of NCT of Delhi and another).

10. In the decision reported in 1984(4) SCC-392(Supra), the Hon'ble Apex Court have held that:—

"Labour and Services—Industrial Disputes Act, 1947-Section 10 and 2 (K)—One a reference is validly made by appropriate Government, Tribunal must adjudicate the dispute on merits—Practice of raising preliminary objections in the reference disapproved."

11. In the decision reported in AIR 2000 SC-469 (Supra), the Hon'ble Apex Court have held that:—

"Industrial Disputes Act (14 of 1947) S. 10—Reference to Industrial Tribunal-Jurisdiction-cannot go into the validity of the reference."

12. In the decision reported in 2007 (115) FLR-427 (Supra), the Hon'ble Apex Court have held that :—

"Settlement within the meaning of Sub-Section (3) of Section 18 of the Industrial Disputes Act is binding on both the parties and continues to remain in force unless the same is altered, modified or substituted by another settlement.

** ** *

The expanding definition of "workman" as contained in section 2(S) of the Industrial Disputes Act would confer a right upon the appellant to obtain appointment on compassionate ground, subject, of course, to compliance of the conditions precedent contained therein."

13. In the decision reported in 1993 (1) BLJ-52 (Supra) the Hon'ble High Court, Ranchi Bench have held that:—

"In this case, provision for giving employment to the dependent of an employee who dies in harness in a condition of service. Such a condition of service has been included in the settlement entered into by and between the employer and employees. Such a provision per se cannot be said to be unreasonable".

14. In the decision reported in 2001-I-LLJ-196 (Supra) the Hon'ble Delhi High Court have held that:—

"Industrial Disputes Act, 1947-Sec, 2(K)— Industrial Dispute—Definition of—Word "Person" appearing in section is wide enough to permit any person to raise an industrial dispute when condition of labour is involved."

15. Applying the principles enunciated by the Hon'ble Courts as enunciated in the above decisions to the present case in hand, it can be held that the dispute raised by the union on behalf of Smt. Laxmi for compassionate appointment can be said to be an industrial dispute and the union is entitled to raise the dispute and the reference made by the Central Government is not bad in law and the Tribunal has to decide the reference on merit.

16. The claim of the union is that the deceased workman should not have been held to be a "Badli" worker and he should have been held to be a permanent workman, as he had completed 240 days of attendance in a continuous period of one year.

The case of the party no. 1 is that though the deceased workman was appointed temporarily till 31.07.1996 from 01.06.1996 *vide* letter no. 1052 dated 01.06.1996, he continued to work as piece rated Badli loader, beyond the said date inadvertently, without any letter of his extension and he died on 03.10.1997 and his name was removed from the colliery roll *vide* office order dated 23/27.10.1997 and during his service period, he had not made any claim for regularisation as a permanent loader and in 1996, his total attendance was 137 days and in 1997, his attendance was 145 days and as he did not put the required minimum 190 days of attendance as an underground worker in any of the calendar year, he cannot be deemed to be a permanent worker and section 51 of the Mines Act defines a calendar year as the period of twelve month beginning with the first day of January in any year.

However, in view of clause 3.3 of the Certified Standing orders and as the definition given under section 51 of the Mines Act of "Calendar year" is for the purpose of "Chapter VII- Leave with wages", I find no force in the contention raised by party No. 1.

Clause 3.3 of the certified standing orders reads as follows:— "Badli or Substitute one who is appointed in the post of permanent workman or probationer who is temporarily absent, but he would cease to be a "Badli" on

completion of a continuous period of service of one year (190 attendance in the case of below ground workman and 240 attendance in case of any other workman) in the same post or other post or posts in the same category, or earlier if the post is vacated by the permanent workman or probationer. A "Badli" working in place of a probationer would be deemed to be permanent after completion of the probationary period."

It is clear from clause 3.3 of the Certified Standing Orders that the same does not speak of any calendar year, but speak of continuous period of service of one year. So, the contentions raised by the party No. 1 that the required attendance is to be counted according to calendar year cannot be entertained.

It is clear from the documents on record and also the admitted case that the workman had completed the required attendance from June, 1996 to May, 1997 and in view of the deemed provision of clause 3.3 of the Certified Standing Orders, he had ceased to be a Badli worker and he had become a permanent employee before his death. So treating the deceased workman as "Badli" worker by party no. 1 is not justified.

17. It is not disputed that Smt. Laxmi is the widow and dependent of deceased workman, Pocham Kondaya. It is also not disputed that there is provision in the NCWA-VI of giving employment to one dependent of a workman, who dies while in service. It is also clear from the materials on record that the deceased workman died while in service. The party No. 1 did not consider the application of Smt. Laxmi for employment on the ground that deceased workman was not holding any appointment order on the date of his death.

At the time of argument, it was submitted by the learned advocate for the party no. 1 that even if it is found from record that the deceased workman continued to work beyond 31.07.1996, still then, he was a "Badli" worker and as the provision of giving employment to one dependent of a workman, who dies in service do not have application to the dependent of Badli worker, the party No. 1 rightly denied employment to Smt. Laxmi.

The learned advocate for the petitioner submitted that there is nothing in NCWA-VI to show that the provision of giving employment to a dependent is applicable only to permanent workman and not to "Badli" worker and as such, even if the deceased workman is treated to be a badli worker on the date of his death, still then, his dependent, Smt. Laxmi is entitled for employment.

In support of the contention, the learned advocate for the petitioner placed reliance on the decisions reported in 1993(1) BLJ-52 (Supra) and 2004 I CLR-872 (Panyam Cement Employees Union Vs. Commissioner of Labour).

18. "In the decision reported in 1993 (1) BLJ-52 (Supra) the Hon'ble High Court, Ranchi Bench have held that:—

"It was further held that in any event, there is nothing in National Coal Wage Agreement no. II to show that clause 10.4.2 thereof is applicable only to a permanent workman."

19. In the decision reported in 2004-I-CLR-872 (Supra) the Hon'ble High Court of A. P. have held that:—

"Held, Badli workers are workman as contemplated u/s. 2 (S) of the I.D. Act."

So, keeping in view of the principles enunciated by the Hon'ble Courts as mentioned above, now, the present case in hand is to be considered.

20. It is already held that the deceased workman should have not been treated as a "Badli" worker and he should have been deemed as a permanent workman. Now, it is to be found out if Smt. Laxmi is entitled for employment, even if the deceased workman is held to be a "Badli" worker for the sake of argument.

21. It is clear from the pleadings of the parties, evidence on record and the submissions made by the learned advocates for the parties that the claim of Smt. Laxmi to give her employment was rejected by the party No. 1 only on the ground that she being the dependent of a Badli worker is not entitled for employment. So, the only point for consideration is whether the dependent of a Badli worker is entitled for employment as per the provisions of NCWA.

22. The appointment of deceased workman on 01.06.1996 as a Badli worker and that he worked till July, 1997 and he died on 03.10.1997 has not been disputed by the parties. NCWA-IV was in force when the deceased workman was appointed. Likewise, NCWA-VI was in operation at the time of the death of the deceased workman. It is also not disputed that there was provisions in NCWA-IV, V & VI for giving employment to the dependents of a worker who dies while in service. As on the date of the deceased workman, NCWA-VI was in force, it is necessary to consider as to whether Smt. Laxmi is entitled for employment as provided in NCWA-VI.

The relevant portion of clause 9.5 of NCWA VI, which is in respect of giving employment/Monetary compensation to female dependent of workmen, who dies while in service and who are declared medically unfit as per clause 9.4.0 above would be regulated as under:

- (i) In case of death due to mine accident, the female dependent would have the option to either accept the monetary compensation of Rs. 3000/- per month or employment irrespective of her age.
- (ii) In case of death/total permanent disablement due to causes other than mine accident and medical unfitness under clause 9.4.0, if the female dependent is below the age of 45 years, she will have the option either to accept the monetary

compensation of Rs. 3000/- per month or employment.

In case the female dependent is above 45 years of age, she will be entitled only to monetary compensation and not to employment.

It is clear from the above clause that a female dependant of a workman is entitled to employment or monetary compensation if the workman dies while in service. The specific word mentioned in the said clause is "workman" and nothing else. It does not specify the category of workman. It also does not say that dependants of Badli workman are not entitled for the benefit of the same. It also does not provide that dependents of Badli worker, who had not done 190/240 days of work in any calendar year, are not entitled to get the benefit of the provision.

Now, it is to be considered as to whether a Badli worker is a workman or not. NCWA VI does not have any such definition. It is admitted by the parties that the provisions of certified standing orders of the WCL were applicable to deceased workman. The certified standing orders provide the definition of "Workman". In section 1 of the said standing orders (Commencement and Application), it is mentioned that it shall apply to all workman employed in all units of M/s. Western Coalfields Limited situated in different place in the country which come within the definition of Industrial Employment (Standing Orders) Act, 1945 and include all workmen governed by the National Coal Wage Agreement. Section 3.1 of the said Standing Orders provides the classification of workman for the purpose of the Standing Orders. The same reads as follows:

- (a) Apprentice
- (b) Badli or Substitute
- (c) Casual
- (d) Permanent
- (e) Probationer
- (f) Temporary

The above classification shows that Badli or Substitute employee is also a workman.

When there is no bar either in the NCWA or in the Certified Standing Orders to give the benefit of clause 9.5.0 of the NCWA VI to dependants of Badli workman (whether he had done 190/240 days of work in any calendar year or not), the decision of the party No. 1 that the applicant is not entitled for employment is not justified. Hence, it is order:—

ORDER

The action of the management of Chandrapur Area of WCL in treating Sh. Pocham Bogaram, Badli Underground Loader even after completion of 190 days attendance within one year of his joining service as a Badli Loader was illegal and unjustified in terms of clause 3.3 of the Certified Standing Orders of WCL.

2. The action of the management in denying employment to the dependents of the deceased workman is illegal and unjustified. The applicant, Smt. Laxmi, the widow and dependent of the deceased workman, Pocham Kondaya Bogaram is entitled for employment as per NCWA-VI. As it is admitted that other benefits have already been given, the applicant is not entitled to other benefits mentioned in the schedule of reference.

The Party No. 1 is directed to implement the award within one month from the date of publication of award in the official gazette.

J.P. CHAND, Presiding Officer

नई दिल्ली, 5 फरवरी, 2014

का.आ. 655.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण लखनऊ के पंचाट (संदर्भ संख्या 62/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 05/02/2014 को प्राप्त हुआ था।

[सं एल-12012/55/2010-आईआर (बी-1)]
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 5th February, 2014

S.O. 655.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 62/2011) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 05/02/2014.

[No.L-12012/55/2010-IR (B-I)]
SUMATI SAKLANI, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT LUCKNOW

PRESENT

DR. MANJU NIGAM, Presiding Officer

I.D. No. 62/2011

Ref. No. L-12012/55/2010-IR (B-I) dated 08.04.2011

BETWEEN

Sri Ram Vilas Mishra S/o Sri Karan Mishra
R/o Village Garya, Post: Manjhavan
Distt. Balia (UP)

AND

1. General Manager
Bhartiya State Bank,
Local Head Office,
Moti Mahal, Lucknow

2. Dy General Manager
Bharitya State Bank,
Zonal Office
Varnasi (UP)

AWARD

1. By order No. L-12012/55/2010-IR (B-I) dated 08.04.2011 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between the Sri Ram Vilas Mishra S/o Sri Karan Mishra, R/o Village Garya, Post: Manjhavan, Distt. Balia (UP) and the General Manager, Bhartiya State Bank, Local Head Office, Moti Mahal, Lucknow & the Dy. General Manager, Bharitya State Bank, Zonal Office, Varnasi (UP) for adjudication.

2. The reference under adjudication is:

"Whether the action of the management of State Bank of India, Local Head Office, Lucknow in not regularizing Shri Ram Bilas Mishra as permanent employee on the basis of temporary service rendered by HIM, from the date from which other similar candidates who put in fewer service than HIM were regularized, is legal and justified? To what relief the workman is entitled?

3. The case of the workman, in brief, is that the workman, Shri Ram Bilas Mishra was initially appointed in class IV category in 1978 for four days only and thereafter was again taken on duty *w.e.f.* 24.04.81 @ Rs. 500/- month and worked continuously up to 18.7.81, total for a period of 90 days. It is stated that the Bank *vide* circular dated 01.05.91 circulated that the daily wager and temporary workers who have worked after 1975 for a period for 30 days and up to 70 days in 36 months will be regularized in service; accordingly, the workman submitted his application, who in turn was interviewed and panel was prepared. It has been alleged by the workman that the management regularized the services of those workman who have worked for 30 days only and spared the workman arbitrarily in violation to the provisions contained in the Section 25G of the Industrial Disputes Act, 1947. It is also alleged that the management prepared a panel in 1989 wherein the name of the workman finds place at serial No. 180. Management regularized the services of the workmen from the panel of 1991 who were much junior in working days; but the workman has not been regularized. It is also alleged that the management invited names from employment exchange along with those who had worked in the bank but this time again the name of the workman was ignored and fresh faces were given appointment, in violation of the provisions contained in the Section 25H of the Act. Accordingly, the workman has prayed that the action of the management in not regularizing his services be declared illegal and he be regularized as class IV employee with consequential benefits at par with the juniors.

3. The management of the State Bank of India has denied the claim of the workman by filing the written statement; wherein it is submitted that the workman worked

with the Bank for the period between 24.04.81 to 18.07.81 for 86 days only and he had been found suitable & his name has been figured in panel of 1991 at serial No. 180, out of which only 83 persons out of panel could get appointment in the bank. It is also submitted that the vacancies did not arise till 31.12.94, therefore, the panel lapsed on 31.03.97; hence the workman could not get appointment. The management also submitted that none of the persons whose names figures below that of the workman was appointed by the Bank, thus there is no violation of Section 25 G & H of the Act. The management of the Bank has also taken plea that the present dispute is not an industrial dispute under the provisions of section 2 'K' or 2A of the Industrial disputes Act, 1947; and accordingly, the management has prayed that the claim of the workman be rejected being devoid of merit.

4. The workman has filed rejoinder; wherein apart from reiterating the averments already made in the statement of claim, the workman has not stated any new fact.

4. The parties have filed documentary evidence in support of their respective claim. The workman examined himself whereas the management examined Shri D.K. Sharma, Asstt. General Manager in support of their pleadings. The parties availed opportunity to cross-examine the witnesses of each other apart from forwarding oral argument.

5. Heard authorized representatives of the parties and perused entire evidence on record.

6. The authorized representative of the workman has submitted that the management of the bank prepared the panel of the names of the workmen who have worked in the Bank in the year 1991; wherein the name of the workman was serial No. 180; but the workman was not regularized by the Bank in spite of the fact that he had worked with the bank for 90 days; however, the bank regularized the services of the other workman who have worked for less working days.

7. In rebuttal, the authorized representative of the management has argued that the management prepare the panel in 1989 and against the said panel only 83 workmen were regularized and since the workman's name was at serial no 180, his name could not be considered for regularization. He also submitted that the panel of year 1989 lapsed on 31.03.97 due to non-availability of the vacancies. He has also submitted that none of the junior had been absorbed in the bank's services. Also, he has contended that the present dispute is not an industrial dispute within the provisions of the section 2 'K' or 2A of the Industrial disputes Act, 1947.

8. I have given my thoughtful consideration to the respective arguments forwarded by the authorized representatives of the parties and scanned the entire evidence available on record in the light of their argument.

9. The management of the Bank in its written statement has taken objection that the present dispute is not an industrial dispute within the provisions of section 2 'K' or 2A of the Act. In this regard it is well appreciated that the present industrial dispute has been referred to this Tribunal by the appropriate Government *i.e.* Central Government, in exercise of powers conferred under Clause (d) of the sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Tribunal Act, 1947 and this Tribunal has to answer the schedule of reference, referred to it. From the pleading of the management it is not apparent that the management ever challenged the reference order before Competent Court. The reference has been referred to this Tribunal by the Central Government to answer and it has no power to refuse the same or to sit in appeal against the order of reference. In *Steel Authority of India Ltd. Vs. Hindustan Steel Employees Union & Ors.* 1998 (78) FLR 293 it has been observed by Hon'ble Apex Court as under:

"Court has to see substance and not form of order. Formal defects in citation of reference order would not oust jurisdiction of Tribunal. If the Government inadvertently or wrongly or even deliberately commits the dispute for adjudication under Section 2(K) of the Act, the Tribunal has still power for adjudication.

Hence, in view of the law cited and discussions made hereinabove, I find no merit in the aforesaid objection of the management.

10. The workman has come up with a case that he worked with the management of the Bank for 90 days and the bank prepared a panel in the year 1989 and in 1991, on the basis of working days, for regularization of services; but he was not regularized by the bank instead the other workmen with less working days have been regularized. The management of the bank, refuting the contentions of the workman has come forward with the pleadings that the workman had actually worked for 86 days with the bank and in the panel for year 1989 his name was at the serial No. 180 and from that panel only workmen up to serial No. 83 were regularized as there was only 83 vacancies against said panel and no junior to the workman had been regularized for panel of 1989, which expired on 31.03.97. It has also come in the evidence of the management that the bank prepared another panel in 1991 for Menial Staff and the workman was not considered in that as he did not belong to that category rather he belonged to messenger category.

11. The management witness, Shri D.K. Sharma, Assistant General Manager stated on oath that the bank prepared a panel for year 1989 of 218 workmen wherein the name of the workman, Ram Bilas Mishra was at serial No. 180 and in the said panel the persons were appointed from serial No. 1 to 83 and said panel expired on 31.03.1997. He has also stated that in the panel for the year 1991 no Messenger was appointed. In his cross-examination he admitted that panel of 1989 was effective up to 1997 and

another panel was made in 1991. He also stated that the workman could not be absorbed in the panel of 1989. It was also stated that the panel of 1989 was for Messenger and panel of 1991 was for Menial staff and the workman was qualified for 1991 panel accordingly he was not informed. He very specifically stated that the workman was worked as Qoolie Messenger and he was given opportunity in the panel of 1989 in which 83 persons were appointed and the workman as at serial No. 180. It was also stated that the panel of 1991 was for Menial staff and in said panel 36 persons were selected. The workman in his cross-examination admitted that he was not 'Menial Staff'.

From the above evidence of the parties, it becomes crystal clear that the case of the management is that it prepared two panels one in the year 1989 for Messenger staff, which expired on 31.03.1997; and other in the year 1991 for Menial staff. Also per documentary evidence relied on by the workman, in the panel for year 1989 names of 218 persons were included; wherein the name of the workman was reflected at serial No. 180 and out of those 218 persons only the persons up to serial No. 83 were appointed as per availability of 83 vacancies. Since the name of the workman was at serial No. 180 and only 83 vacancies were available; hence, the workman could not be regularized. Further, the workman has alleged that the workmen with less working days were regularized by the Bank; but has not adduced any evidence to substantiate his pleading that any workman whose name was at lower position in the panel of 1989 was absorbed by the bank.

Further, it is evidence from the evidence of the management that the panel for year 1991 was made for the workman of Menial staff and the workman was not that category. The workman himself, in his cross-examination, has admitted that he never worked as Menial staff, therefore, as per evidence of the management; the workman was not included in the panel for 1991. The workman has disclosed the names of the workmen with less working who have been appointed by the Bank; but all of them were of panel 1991, which was for Menial staff; since the workman had worked as Qoolie Messenger his name could not be taken into account in the panel for year 1991.

12. On scrutinizing the evidence, it is apparent that the workman worked as Qoolie Messenger and his name was there in the panel for year 1989 for Messengers and he could not get appointment as his name was at serial No. 180 and since only 83 vacancies were available with the Bank, the persons up to serial No. 83 were absorbed, sparing all including workman. The workman could not show any other worker below at serial No. 83 from the panel of 1989 has been regularized. The 36 workmen who were regularized as per allegations of the workman, are from the panel of 1991, which was prepared for Menial Staff and the workman himself had admitted that he never worked as Menial Staff. Hence, the workman being Messenger was not eligible for inclusion in that panel and the management rightly did not consider the name of the workman for the panel of 1991.

13. In view of the discussions made hereinabove, I find no illegality or irregularity has been committed by the Bank while not considering the name of the workman for regularization; and I come to the conclusion that the workman, Ram Bilas Mishra is not entitled for any relief.

14. Award as above.

Dr. MANJU NIGAM, Presiding Officer

Lucknow

23rd January, 2014.

नई दिल्ली, 5 फरवरी, 2014

कांआ 656.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार उत्तर रेलवे प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, लखनऊ के पंचाट (संदर्भ संख्या 27/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05/02/2014 को प्राप्त हुआ था।

[सं एल-41011/98/2010-आईआर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 5th February, 2014

S.O. 656.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 27/2011) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow as shown in the Annexure in the Industrial Dispute between the management of Northern Railway, Hazratganj, and their workmen, received by the Central Government on 05.02.2014.

[No. L-41011/98/2010-IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT, LUCKNOW

PRESENT:

Dr. MANJU NIGAM, Presiding Officer

I.D. No. 27/2011

Ref. No. L-41011/98/2010-IR(B-I) dated 11.3.2011

BETWEEN

Mandal Sangatan Mantri
Uttar Railways Karamchair Union,
283/63, KH, Gadi Kannora (Premvati Nagar)
PO Manak Nagar
Lucknow-16

AND

1. Sr. Divisional Railway Manager (Per.)
Northern Railway, Hazratganj
Lucknow

AWARD

1. By order No. 1-41011/98/2011-IR(B-I) dated 11.03.2011 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Mandal Sangatan Mantri, Uttar Railways Karmachari Union, 283/63, KH, Gadi Kannora (Premvati Nagar), PO Manak Nagar, Lucknow-16 (Espousing cause of Sri Jai Raj S/o Sri Gurudeen, and the Sr. Divisional Railway Manager (Personnel), Northern Railway, Hazratganj, Lucknow adjudication.

2. The reference under adjudication is:

"WHETHER THE DEMAND OF UNION REGARDING PLACING SHRI JAI RAJ S/O SHRI GURUDEEN, ASSISTANT LOCO PILOT, LOCO-SHED, LUCKNOW IN THE PENAL OF THE YEAR 1983-84 ABOVE HIS JUNIORS, IS LEGAL AND JUSTIFIED? TO WHAT RELIEF THE WORKMAN IS ENTITLED?"

3. The order of reference was endorsed to the Mandal Sanghatan Mantri Uttar Railway Karmachari Union, Lucknow with the direction to the party raising the dispute to file the statement of claim along with relevant documents, list of reliance and witnesses with the Tribunal within fifteen days of the receipt of the order of reference and also forward a copy of such a statement to each one of the opposite parties involved in this dispute under rule 10(B) of the Industrial Dispute (Central) Rules, 1957.

4. The order of reference was registered in the Tribunal on 30.03.2011 and notice was issued for filing statement of claim by the workman; statement of claim was filed on 28.04.2011.

5. In brief the case of the workman is that he was appointed as Loco Cleaner on 19.07.1978 and worked upto 03.09.1981 and on 04.09.1981 he was illegally retrenched. Against the order I.D. No. 48/83 and 163/83 was filed by the workman before CGIT, Kanpur whereby *vide* order dated 19.02.1987 and 25.11.85 both IDs decided in favour of workman and they were directed to be absorbed from the date of his retrenchment. Against the award Railway Management filed a writ before Hon'ble High Court which was too rejected. Aggrieved by the order Railway management filed an SLP which was rejected. During pendency of the dispute management absorbed the workman on 24.04.1984.

6. The management absorbed the workman as Loco Cleaner *vide* order dated 31.08.1991 but his juniors were absorbed on 30.09.1981 in the panel of 1983-84. The workman union stated that Sri Amarjit Singh and Sri Abdul Aziz was absorbed in the panel of 1992 but by the order of Hon'ble CAT, Lucknow the workman absorbed in the panel of 1983-84. Sri Pratap Bahadur and Ahmad Ali was absorbed in panel of 1992 but order of CGIT, Lucknow in I.D. No. 28/2004

workman absorbed in the panel of 1983-84. The union prayed that workman be given benefit in the panel of 1983-84 alongwith all other benefits.

7. The management filed written statement stating therein that the workman was engaged as daily rated casual labour alongwith other workers who got the job by fraudulent means. The management found the engagement of workman alongwith other persons on the basis of fake and fictitious papers so that the matter referred to the Vigilance Branch and services of workers terminated on 04.09.1981. The workers including workman preferred a I.D. Case before CGIT, Kanpur and got award in their favour. The management re-engaged the workman as well as other similarly situated workers and provided them all service benefits after empanelment and screening which is necessary as per Railway Rules.

8. The management stated that the demand of the worker is not legally maintainable because as per Railway Rule 2511 and amended para 2511(a) in which the seniority inter determination is clearly mention and upon the same Railway Rule Hon'ble Supreme Court provided that the seniority of worker to be reckoned from the date of their regular appointment their prior services not to be counted for seniority.

9. The management stated that worker union sought the relief for posting of cleaner by mentioning the name in the list of 1983-84(Panel), which is not possible because the seniority of other employees will be affected and they are not arrayed as party in the present case. The management prayed that the present claim statement is misconceived and liable to be rejected.

10. During the pendency Mandal Secretary of the worker Union made an endorsement to the effect that he does not want to pursue its claim as the workman has retired and nothing is due to him from the management therefore, the present reference order is decided as if there is no grievance left to the workman. Resultantly no relief is required to be given to the workman concerned. The reference under adjudication is answered as NO CLAIM AWARD accordingly.

11. Award as above.

Lucknow

18.11.2013

Dr. MANJU NIGAM, Presiding Officer

नई दिल्ली, 5 फरवरी, 2014

कांआ 657.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पूर्व रेलवे प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण लखनऊ के पंचाट (संदर्भ संख्या 152/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05/02/2014 को प्राप्त हुआ था।

[सं एल-41012/50/2002-आई आर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 5th February, 2014

S.O. 657.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 152/2002) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow as shown in the Annexure in the Industrial Dispute between the management of Eastern Railway, Ashok Marg, and their workmen, received by the Central Government on 05.02.2014.

[No. L-41012/50/2002-IR(B-I)]
SUMATI SAKLANI, Section Officer

ANNEXURE

**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, LUCKNOW**

PRESENT:

N. K. PUROHIT, Presiding Officer

I.D. No. 152/2002

Ref. No. L-41012/50/2002-IR(B-I) dated 27.08.2002

BETWEEN

Shri Amar Singh S/o Shri Chotte Lal
283/63 KH(B) Ghari Kanora, Premvati Nagar
P.O. Manak Nagar,
Lucknow

AND

The Sr. Divil. Mechanical Engineer (SME)
Eastern Railway, Ashok Marg
Lucknow (U.P.)-226001

13.07.2009

AWARD

1. By order No. L-41012/50/2002-IR(B-I) dated 27.08.2002 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Shri Amar Singh S/o Shri Chotte Lal, 283/63, "B" Garhi Kannora (Premvati Nagar), Post Manak Nagar, Lucknow (U.P.) and the Sr. Divil. Mechanical Engineer (S.M.E.), Eastern Railway, Ashok Marg, Lucknow (U.P.) for adjudication.

2. The reference under adjudication is:

Kya Prvottar Railway Lucknow Dwara Shri Amar Singh Putra Swa Chotte Lal, Khalasi Ko dandaadesh San. M./C.D.O./D.A.R./Lucknow JN/91/13/14 Dinank 04.06.98 ke dwara naukari se nikaala jana nyayochit tatha nayasangat hai?" Yadi nahi to karmkaar kis anutosh ka adhikari hai?"

3. The case of workman in brief is that he was appointed as Khalasi under employers on 22.4.76 and worked as such. He fell ill severely on 06.10.95 and consequently was unable to move and undergone treatment of a private doctor and his wife herself intimated the office regarding this. It has been stated by the workman

that during his illness the management unauthorizedly initiated departmental proceedings against him without serving him any charge sheet for imposing major penalty. The workman reported for his duty on 25.07.97 with fitness certificate before Senior Divisional Engineer who referred the workman to Medical Superintendent, NER for medical check up. The workman turned up on 05.02.98 after fully fit for work and appeared before he was removed from services with immediate effect on 05.06.98 *vide* impugned order dated 04.06.98 under Rule 6 of DAR, 1968. The workman has alleged that prior to passing the impugned order dated 04.06.98 neither copy of inquiry report was provided nor any explanation was called from him in this respect in as much as the impugned order dated 04.06.98 was not passed by Competent Authority. It has also been alleged by the workman that the Inquiry Officer did not extend any opportunity to the workman to appoint any defence assistant to defend him and inspect necessary documents in as much as he was not provided copy of the statemnets of the witnesses in contravention with the principles of natural justice. Accordingly the workman prayed to set aside the impugned order dated 04.06.98 and reinstate him *w.e.f.* 05.06.98 with other consequential benefits.

4. The management of the Railways has filed its written statement wherein it has submitted that the workman remained absent authorisedly without any notice to the concerned office *w.e.f.* 06.10.1995 to 25.09.1997. It has categorically been stated by the management that the workman was given charge sheet for alleged misconduct of remaining unauthorized absence under Rule-9 of D.A.R. 1968 and also a show cause notice was given to him before passing impugned order dated 04.06.98. The workman was made known about dates of inquiry after 07.02.98 but the workman again remained unauthorizedly absent deliberately. The opposite party has denied the allegation of the workman that he was not given proper opportunity for his defence and has submitted that the enquiry proceedings were conducted in accordance with the principles of natural justice giving full and proper opportunity to the workman to defend himself by appointing some defence assistant, however, it was the workman who did not avail the opportunity and did not appoint any defence assistant nor demand for any document from the management. Thus, the claim of the workman is liable to be rejected.

5. The workman has filed rejoinder whereby he has only reiterated his averments in the statement of claim and has introduced nothing new.

6. The management of the Bank submitted photo copies of the entire enquiry proceedings in support of their respective case. Following preliminary issue was framed on 11.07.2005 by the Tribunal:

(i) Whether the departmental enquiry was conducted in violation of principles of natural justice as alleged by the workman?

7. The workman examined himself whereas the management examined Sri Azaz Ahmad in support of their

stand on preliminary issue. After hearing arguments of the parties, preliminary issues were decided in favour of the management *vide* order dated 23.04.2007, which reads as under:

"On overall evaluations and submissions by parties I come to the conclusion that the inquiry has been conducted in accordance with the principles of natural justice and find it to be fair and proper. The issue is, decided against the worker."

8. Subsequently, the case was listed on 29.05.2007 for remaining evidence of the parties for disposal of the case but on the date fixed the workman filed an application C-34, stating therein that he has already adduced his oral evidence, therefore, does not intend to adduce any more. Accordingly the management also stated that it also does not intend to adduce any further evidence in the case.

9. Heard learned representatives of the parties and perused entire material on record.

10. The learned representative on behalf of the workman has restricted his arguments only on the point of quantum of punishment imposed *vide* impugned order dated 4.6.98. He has submitted that in view of the alleged misconduct, the punishment of removal from service is harsh & disproportionate and prayed for lesser punishment by modifying the impugned under Section 11-A of the I.D. Act. In this regard he has placed reliance on:

- (i) 2001(90) FLR 1008 between Gouranga Acharjee vs. IIIrd Industrial Tribunal, West Bengal & others.
- (ii) 2004(102) FLR 499 between Union of India & another vs. Ashraf Ali & another.
- (iii) 2004(910) FLR 193 between Lal Arya vs. Commissioner of Police, Delhi & Others.
- (iv) AIR 1994 SC 215 between Union of India & other vs Giriraj Sharma.
- (v) 1989 SCC (L&S) 180 between Scooters India Limited, Lucknow vs. Labour Court, Lucknow & Others.
- (vi) 2002 (94) FLR 1076 between Tje Kishore Srivastava vs. State of UP & another.
- (vii) 2004(4) SLR 310 Cal. High Court between Jadurouth vs. State of Bengal.

11. Per contra, the learned representative on behalf of the management has urged that punishment of removal from service is justified keeping in view the period, the workman absented himself unauthorisedly.

12. Under Section 11-A The Tribunal is empowered to consider not only whether the finding of misconduct as recorded by the management, is correct but also to differ from such a finding if proper case is made out. If ultimately, the Tribunal comes to the conclusion that the misconduct is proved, all the same it could interfere with the punishment, if punishment is not justified even on the finding of misconduct. Thus even the misconduct is proved; it may award a lesser punishment if it is of the opinion that for the proved misconduct punishment of discharge or dismissal is harsh. By means of

Section 11-A of the I.D. Act. The Tribunal is even a power to examine the propriety for the punishment imposed. This legal position also finds support from the case laws cited by the learned representative on behalf of the workman.

13. In present case the alleged misconduct from which the workman has been found guilty is regarding unauthorized absence for period from 06.10.95 to 30.03.97. The workman was in service since 22.04.76 and he was on the post of Khalasi. Admittedly, he remained absent in said period but the case of the workman is that he was ill during this period. The Enquiry Officer has also observed in concluding para of his report. "It appeared from the appearance of the workman that he might have remained in fact ill". During arguments the learned representative on behalf of the workman argued that there is nothing on record which shows that the workman absconded himself from duty without any intimation or without submitting any application for grant of leave on any earlier occasions excepting the period in question as mentioned herein. Admittedly, no other allegation involving moral turpitude has been made by the management.

14. The Enquiry Officer after holding the enquiry found the workman guilty of the charge of unauthorized absence. *Vide* order dated 23.04.2007 of the Tribunal it has been held that there is no irregularity in the matter of conducting the disciplinary proceedings against with workman. But the punishment of removal from services seems to be harsh since it has never been alleged by the management that the workman was a habitual absentee and absented himself from duty without intimation frequently. The reference is pending since year 2002 and the workman is out of service since 05.06.98. Thus, he suffered immensely for 11 years. Since here has been duly established and there is no illegality or irregularity in conducting the disciplinary proceedings, the workman cannot escape punishment. In aforesaid circumstances, the punishment already inflicted upon the workman deserves to be modified by lesser punishment instead of removal from service, as punishment of removal from service is not only harsh but also disproportionate.

15. To ensure substantial justice in the matter & shorten the litigation, the ends of justice would subserved, if, the punishment of removal is quashed and penalty of withholding of two grade increments with cumulative effect is imposed while reinstating the workman without back wages.

16. Accordingly, the impugned order dated 04.06.98 is modified to the extent that instead of removal from service, the punishment of withholding of two grade increments with cumulative effect is imposed on the workman. Resultantly, the workman be reinstated without back wages, with continuity of service, within four weeks from the date of publication of the award.

17. The reference under adjudication is answered accordingly.

18. Award as above.

N. K. PUROHIT, Presiding Officer

13.07.2009

नई दिल्ली, 5 फरवरी, 2014

का०आ० 658.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14), की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर पूर्व रेलवे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण लखनऊ के पंचाट (संदर्भ संख्या 42/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05/02/2014 प्राप्त हुआ था।

[सं० एल-41012/67/2007-आईआर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 5th February, 2014

S.O. 658.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 42/2007) of the Cent. Govt. Indus. Tribunal-cum-Court, Lucknow as shown in the Annexure, in the industrial dispute between the North Eastern Railway, and their workmen, received by the Central Government on 05/02/2014.

[No. L-41012/67/2007-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT, LUCKNOW

PRESENT:

Dr. MANJU NIGAM, Presiding Officer

I.D. No. 42/2007

Ref. No. L-41012/67/2007-IR(B-I) dated 06.09.2009

BETWEEN

The Member Executive

Purvottar Railway Shramik Sangh

C/o D.P. Awasthi, 49, Tilak Nagar

Lucknow.

(Espousing cause of Shri Puran Singh)

AND

The Divisional Railway Manager (personnel)

North Eastern Railway

Ashok Marg

Lucknow.

AWARD

1. By order No. L-41012/67/2007-IR(B-I) dated 06.09.2007 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between the Member Executive, Purvottar Railway Shramik Sangh, C/o D.P. Awasthi, 49, Tilak Nagar, Lucknow and the Divisional Railway Manager (Personnel), North Eastern Railway, Ashok Marg, Lucknow for adjudication.

2. The reference under adjudication is:

"Whether the action of the Management of DRM (Personnel), North Eastern Rly., Lucknow in not promoting Shri Puran Singh S/o Shri Suraj Singh, As Shuntman and Shunt Jamadar is Legal, Fair and Justified? If not, to what relief the workman concerned is entitled?"

3. The case of the workman's union in brief, is that the workman, Puran Singh had been appointed as Gateman on 11.11.75 and was promoted to the post of Pointsman *vide* order dated 18.11.78 and was further promoted to the post of Shuntman on 04.10.80 and thereafter promoted to the post of Shunting Jamadar on 21.03.86. It has been alleged by the workman that though the management promoted him to the post of Shunting Jamadar; but did not fix his pay in the appropriate grade attached to the post and on his representation the management reverted him to his original post. It has been submitted by the workman that aggrieved from the reversion he preferred an application before Hon'ble Central Administrative Tribunal, Lucknow which directed the management to consider the representation of the workman. The management, in compliance passed the order dated 30.11.92 and reverted the workman to the post of Shuntman; and while reverting him did not fix his pay in scale of Rs. 950-1500 which was allowed to his juniors *viz.* Shri Ram Kumar Maurya and Kewala Prasad. It has been submitted by the workman's union that inspite of reversion *vide* order dated 30.11.92, the workman was not actually reverted and was allowed to work up to August, 2000. Accordingly, the workman's union has prayed that the action of the management in reverting the workman be declared illegal and he be promoted as Shuntman in grade Rs. 950-1500 from 1983 and further in scale of Rs. 4000-6000 from the date his juniors Shri Ram Kumar Maurya and Kewala Ram have been promoted and also he may be held entitled to be promoted as Shunting Jamadar *w.e.f.* 21.03.86 with consequential benefits of promotion.

4. The management of railways has filed its written statement where it has denied the claim of the workman's union and has submitted that Ram Kumar and Shri Kewala Prasad were promoted as Shuntman in grade of Rs. 3050-4590, in the year 1983 and 1990 respectively after passing selection but the workman was promoted as Shuntman in grade 950-15000 against re-structuring *w.e.f.* 16.06.93 hence the workman is junior to Shri Ram Kumar Maurya and Kewala Ram. It is further stated that the workman was erroneously promoted as Shunting Jamadar *vide* office order dated 21.03.86, which is a selection post and is two grade higher than the post of Shuntman which he was holding on 21.03.86 and under Rules the workman could not be allowed to officiate as Shunting Jamadar in grade 1200-1800 which amount to double ad-hoc promotion. It is further submitted that on receipt of representation from the workman, the Competent Authority ordered that the erroneously issued

promotion order dated 21.03.86, promoting the workman on ad-hoc basis as Shunting Jamadar be cancelled; and accordingly the workman as recited to this substantive post of Shuntman in grade Rs. 800-1150 *vide* officer order dated 30.11.90 with benefits of scale Rs. 1200-1800. It is also submitted that the post of pointman/Shuntman 950-1500 is selection post and the selection was conducted in the year 1987 to 1989 and 1989 to 1990 in which the workman was not selected and in the year 1990 the workman was not selected in the year 1990 and the workman has refused to appear in the selection of pointman/shuntman, as such, the workman is not entitled to the benefit of promotion as shuntman in grade of Rs. 950-1500 prior to 16.06.93. It is specifically submitted by the management that no person junior to the workman is working as Shunting Jamadar and Sri Zahid Husain and other shuntman were selected and promoted as Shunting Jamadar 1200-1800 *vide* office order dated 12.10.88. Accordingly, the management has prayed that the claim of the workman's union be rejected out rightly being devoid of merit.

4. The workman's union has neither filed any rejoinder nor has entered into the witness box to corroborate its pleading in the statement of claim through oral evidence.

5. From the perusal of the file it is evident that the workman's union was first afforded the opportunity to lead its evidence on 11.09.2009 and it filed its evidence on affidavit on 11.12.2009; but the workman did not turn for cross-examination in spite of several opportunities being afforded to him. Since then the case is lingering on pretext or other. The management also did not adduce any evidence. Likewise the parties did not forward any argument in support of their respective stand, therefor, the case was reserved for award, keeping in view long pendency of the case since year 2007 and reluctance of the parties to contest their case.

6. I have scanned the entire material available on the file.

7. It is the case of the workman's union that the workman had not been given promotion in the year 1983 at with his juniors; but the management has denied this fact. Hence, in view of the denial of the management, it was incumbent upon the workman's union to lead evidence to corroborate its averment; but the workman's union utterly failed to do so, as though it filed the affidavit of the workman in evidence but could not produce the workman for cross-examination; hence the contents of the evidence could not be read, there by the pleading of the workman's union are without support of any evidence.

8. It is settled position of law that a party challenging the legality of an action, the burden lies upon it to prove illegality of the action and if no evidence is produced by the party, invoking jurisdiction of the court, must fail. In the present case burden was on the workman's union to set out the grounds to challenge the validity of the action

of the management in not granting promotion to the workman at par with his juniors. This claim has been denied by the management; therefore, it was for the workman's union to lead evidence to show that the alleged injustice was done to the workman, by the management of the railways; but the workman's union failed to prove the same as it has not turned up to corroborate the allegations by proper evidence.

9. In 2008 (118) FLR 1164 M/s. Uptron Powertronics Employees' Union, Ghaziabad through its Secretary *vs.* Presiding Officer, Labour Court (II), Ghaziabad & others, Hon'ble High Court relied upon the law settled by the Apex Court in 1979 (39) FLR 70 (SC) Sanker Chakravarti *vs.* Britannia Biscuit Co. Ltd 1979 (39) FLR 70 (SC) V.K. Raj Industries *v.* Labour Court and others, 1984 FLR 38. Airtech Private Limited *V.* State of U.P. and others and 1996 (74) FLR 2004 (All.) Meritech India Ltd. *v.* State of U.P. and others; wherein it was observed by the Apex Court:

"that in absence of any evidence led by or on behalf of the workman the reference is bound to be answered by the Court against the workman. In such a situation it is not necessary for the employers to lead any evidence at all. The obligation to lead evidence to establish an allegation made by a party is on the party making the allegation. The test would be, who would fail if no evidence is led."

10. In the present case the workman's union has not turned to substantiate his case by way of any evidence as the affidavit of the workman could not be taken into account due to absence of cross-examination of the workman. Mere pleadings are not substitute for proof. It was obligatory on the part of workman's union to come forward with the case that the workman had not been granted promotion at par with his juniors, in contravention to the rules; but the workman's union failed to forward any evidence in support of its claim, as its witness did not turn up for cross-examination before this Tribunal. There is no reliable material for recording findings that the alleged injustice was done to the workman or the action of the management of railways was illegal and unjustified.

11. Accordingly, the reference is adjudicated against the workman's union; and as such, I come to the conclusion that the workman, Puran Singh is not entitled to any of the relief(s) claimed.

12. Award as above.

Lucknow. DR. MANJU NIGAM, Presiding Officer
21st January, 2014.

नई दिल्ली, 6 फरवरी, 2014

का०आ० 659.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार आन्ध्रा बैंक प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय

जबलपुर के पंचाट (90/02) प्रकाशित करती है जो केन्द्रीय सरकार को 06/02/2014 प्राप्त हुआ था।

[सं एल-12011/50/2002-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 6th February, 2014

S.O. 659.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 90/02 of the Cent. Govt. Indus. Tribunal-cum-Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of Andhra Bank and their workmen, received by the Central Government on 06/02/2014.

[No. L-12011/50/2002-IR (B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/90/02

PRESIDING OFFICER: SHRI R.B. PATLE

General Secretary,

M.P. Dena Bank Staff Union.

C/o Dena Bank,

Dayanand Sewashram, GE Road,

Tatibandh,

Raipur, Chhattisgarh

... Workman/Union

Versus

Branch Manager,

Andhra Bank,

Fafadih Chowk,

Raipur, Chhattisgarh

.....Management

AWARD

Passed on this 24th day of January, 2014

1. As per letter dated 30-5-02 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act 1947 as per Notification No.L-12011/50/2002-IR(B-II). The dispute under reference relates to:

"whether the action of the management of Andhra Bank in not promoting Shri Nirmal Kumar Nayak, Peon at Raipur branch of the Bank as "Dafttry" against the notification of vacancy for Dafttry Post attracting special allowance at Raipur Branch in accordance with Head Officer Circular No., 82/Stf. 21 dated 24-3-81 circulated *vide* letter No. 682/03/ZO/1144 dated 11-8-99 is legal and justified? If not, what relief the workman is entitled to?"

2. After receiving reference, notices were issued to the parties. However Ist party workman failed to file Statement of Claim. The reference is proceeded exparte against workman on 14.01.2010.

3. Management filed exparte Written Statement. IInd party submits that notification of vacancy for post of Dafttry at Raipur branch was issued by the Zonal office, New Delhi on 11-8-99. According to the same, all the sub-staff who were interested to opt against the vacancies were given opportunity to apply. Application was to be submitted in proforma before 31.10.99. Shri Nirmal Kumar Nayak did not apply on that date but submitted his candidature by application on 9.12.99 though last date of submission was 31-8-99 Mr. Sushil Kumar submitted candidature in prescribed proforma by post on 27-9-99. His candidature was considered. He was found fit for the post of Dafttry. That the dispute is misconceived. Union is not entitled to make grievance against promotion of Shri Sushil Kumar. Nirmal Kumar is not entitled to any relief.

4. Workman did not participate in the reference proceeding. Statement of claim is not filed. The points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

- (i) Whether the action of the management of whether the action of the management of Andhra Bank in not promoting Shri Nirmal Kumar Nayak, Peon at Raipur branch of the Bank as "Dafttry" against the notification of vacancy for Dafttry Post attracting special allowance at Raipur Branch in accordance with Head Office Circular No., 82/Stf. 21 dated 24-3-81 circulated *vide* letter No. 682/03/ZO/1144 dated 11-8-99 is justified?

In Affirmative

- (ii) If not, what relief the workman is entitled to?"

Workman is not entitled to any relief.

REASONS

5. Though as per terms of reference, the legality of the action of management not promoting Shri Nirmal Kumar Nayak at Raipur Branch as Dafttry, the statement of claim is not submitted by the workman. He is proceeded exparte. Management filed Written Statement. However management also failed to submit any exparte evidence. As such both parties failed to participate in reference proceeding. There is absolutely no evidence to substantiate the claim under reference relating to denial of promotion of Shri Nirmal Kumar Nayak. Therefore I record my finding in Point No. 1 in Affirmative.

6. In the result, award is passed as under:—

- (1) Action of the management of the Andhra Bank in not promoting Shri Nirmal Kumar Nayak, Peon at

Raipur branch of the Bank as "Daftary" against the notification of vacancy for Daftary Post attracting special allowance at Raipur Branch in accordance with Head Office Circular No., 82/Stf. 21 dated 24-3-81 is proper.

(2) Workman is not entitled to any relief.

7. Let the copies of the award be sent to the Government of India, Ministry of Labour and Employment as per rules.

R.B. PATLE, Presiding Officer

नई दिल्ली, 6 फरवरी, 2014

कांआ 660.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक आफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय धनबाद के पंचाट (184/1999) प्रकाशित करती है जो केन्द्रीय सरकार को 06.02.2014 को प्राप्त हुआ था।

[सं एल-12011/62/98-आई आर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 6th February, 2014

S.O. 660.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref.184/1999 of the Cent.Govt.Indus.Tribunal-cum-Labour Court No. 11, Dhanbad as shown in the Annexure, in the industrial dispute between the management of Bank of India and their workmen, received by the Central Government on 06/02/2014.

[No. L-12011/62/98-IR(B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (No. 2), AT DHANBAD

PRESENT:

Shri Kishori Ram, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947.

REFERENCE NO. 184 OF 1999.

PARTIES:

The Zonal Secretary,
Bank of India employees Union Frezer
Road, Patna
Vs. Regional Manager, Bank of India,
Sakchi, Jamshedpur

APPEARANCES:

On behalf of the workman/Union Mr.D.Mukhrjee,
Ld-Advocate

On behalf of the Management

Mr. D.K. Verma,
Ld. Advocate

State : JHARKHAND

Industry : Banking

Dated, Dhanbad, the 17th December, 2013

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec.10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication *vide* their Order No. L-1 2011/62/98-IR(B-II) dt. 19.1.1999.

SCHEDULE

"Whether the action of the Management of Bank of India in not regularizing the service of Sub-staff as given in Annexure a is justified? If not, what relief the workmen is entitled to?"

2. The case of the workmen S/Shri N.R.Rao and 25 others (as enclosed In Annexure-A to the Reference) as sponsored by the Bank of India Employees Union, Patna, is that the Bank of India has several branches; Regional Offices, Zonal officer and Head Offices including the Regional Office, Jamshedpur in Singhbhum District (Jharkhand) to carry out its trade and business in a systematic way throughout the country. In order to carry out the trade and business, (The Bank used to appoint/engage persons in different categories as officers, clerks and subordinates staff as Peons, Sweepers, Baldhi Sepoy etc. from time to time in different branches permanently and temporarily. The workmen have been appointed/engaged in the service of the Bank as sub staff in different branches in the aforesaid region against permanent vacancies caused by deaths, promotion, transfer and expansion of the branches or otherwise to do the usual and manual works as were/are entrusted to peon category in the subordinate cadre for any time. Though the workmen have been working in the service of the Bank for a long period ten to fifteen years, having completed 240 days in a block of twelve months or in a calendar year, they were illegally and arbitrarily terminated from their services when they demanded from the Bank for their regularization; thus they have been thereby deprived of the benefits and facilities at par with other permanent and regular workmen of the Bank. At last, the Union, registered under the Trade Union Act and affiliated to All India Bank Employees' Association, took up their cause at their approach, as despite some vacancies in the cadre, the management had vindictively terminated their services without declaring them surplus staff in utter violation of the provisions u/s 25 F of the Act, that of different Bipartite settlement binding upon the Bank and its workmen regarding rate of wages, grade, benefits and other facilities, and totally against the Banking Service rule known as the "Shastri Award", so the action of the managements in not regularizing them as permanent employees amounting to unfair Labour Practice

in violation of the Article 14 & 16 of the Constitution of India. Besides Mr. Samir Kumar Ghosh, one of the workmen has already been regularized and appointed in the permanent service of the Bank in August, 1998; thus the action of the management is also discriminatory. Therefore the workmen are legally entitled to their regularization with retrospective effect from their respective dates of termination with full back wages etc.

3. The Sponsoring Union in its rejoinder specifically denying the allegation of the Opp./Management has stated to have validity and properly made out the case of the two workmen that they had worked at different branches of the Bank for a long time, each completing 240 days in a block of one year or a calendar year; that the three workmen (1) Chandra Bhanu Gupta, (2) Dilip Kumar Thakur, (3) S-M Fahimuddin had filed the writ petition in the Hon'ble High Court of Patna, at Ranchi Bench, Ranchi which was disposed of with certain observations to filing the dispute, that the workmen have been employed by the management for long time, having completed 240 days in a block of one year or in calendar year from time to time with a notional break of 4 days or a few days, as the Management of the Bank duly and properly authorized the Branch Manager to appoint them on the post of Peon/Badli Sepoy and accordingly they have been doing the same and similar nature of job as other permanent peons of Class IV since their appointment. Further it is alleged against the Selection Committee to have adopted "Pick & Choose" and discriminating policy while recruiting the two of the workmen against the rest ones. SO the workmen are entitled to the relief of their regularization in the service of the Bank with all benefits of differential wages etc.

4. Whereas the contra pleaded case with categorical denials of the Opp./Management is that The present reference is unmaintainable, as the Hon'ble High Court of Patna, Ranchi Bench, while disposing the CWJC Nos. 530/94(R) 529/94(R) 765/94(R) filed by S/Shri Chandra Bhanu Gupta, Dilip Kumar Thakur and S.N. Fahimuddin, three of the workmen respectively, was pleased to observe as per the order dt 3.10.94 in the first Writ petition :—

"....The petitioner does not deserve any legal right to be appointed and consequently a writ in the nature of Mandamus can not be issued in his favour in the matter". The similar views were taken by the Hon'ble High Court as applicable to both latter Writ application as per the Orders dt. 14.12.1994 and 22.12.1994, so the reference is liable to be summarily rejected. The Bank of India has its own recruitment rules in conformity with the Articles 14 & 16 of the Constitution of India for the appointment of any subordinate post or a clerical post only based on open selection by inviting application from all eligible candidates possessing requisite qualifications and experience, but not based on the pick & choose methods adopted by the Branch Managers of different Branches. The practice of appointing as

casual or Badli Worker by the Branch Manager and of allowing such workmen to put 240 days attendance, and then regularizing them as Class IV employee of the Bank is total violative of provisions of the recruitment rules and the constitution of the India, as it leads to corrupt practice followed in the matter of employment in the banking services. So the management in no circumstances can adopt such procedure of regularization of Badli, casual or temporary workers on class IV or Class III posts.

5. Further it is alleged on behalf of the Opp./Management that some of the concerned persons having requisite qualifications and experience being enrolled in the Employment Exchange Office and accordingly on forwarding their names by the Employment Exchanges to the management success in the requisite test conducted by the Selection Committee, and they were recruited as Class IV employees of Bank, and are on the regular roll of the Management. But the concerned workmen had worked for temporary periods at different Branches during different periods according to requirements of the Bank as such Sri N.R. Rao under SI.No.1 had worked at Jamshedpur Jugsalari and Adityapur Branches whenever required in the years 1991, 1992 and 1993. Likewise the workmen concerned had worked at the branches of Telco Town, Sundernagar, Somra, Govindpur, Dalaikela, Dhaktidih, Chakradharpur, Mandasoli, Barajamada, Bistupur, Raghunathpur, Ghosaling, Kuchai and Gua etc. all under Jamshedpur Zone of the Bank. But none of them deputed against any permanent vacant post of Class -IV employee, and none of them regularly performed any work of permanent nature at any branch. They were only casual workers engaged by the Branch Manager for temporary periods. After completing of the job of casual nature, their service used to discontinue from the Branch. Thus none of them was kept on any regular roll in the service of any branch. As such claim of the workmen or the Union for the regularization is unsustainable; so they are not entitled to any relief.

6. The O.P./Management in its rejoinder has categorically denied all the allegations of the Union/workmen, but it has admitted that the concerned workmen had worked at different branches at different period as casual /Badli workers to meet temporary requirements for performing miscellaneous jobs. They were never engaged for III or IV jobs against any permanent vacancy.

FINDING WITH REASONING

7. In the instant reference WWI Ratan Roy Choudhary, WW2 Makhan Kundu, WW3 Narain Kr. Chaakrvartay, WW4 Satyajit (Stayajit) Ghosh, WW5 Swapan Kumar Adak, WW6 Arun Chandra Das all workmen (out of 26 ones) except WW4 who is the Dy. General Secretary for the Union concerned, and MWI Ravindra Bhushan Pd., the Sr. Manager, Bank of India (HR Deptt.), Zonal Office, Jamshedpur for the O P./Management have been examined respectively.

WW1 Ratan Roy Choudhary states to have been working as Peon since 1988 at Bank of India Telco Branch Telco, Jamshedpur under us Regional Office at Sakchi, now at Bistupur Jamshedpur just all other workmen are accordingly continuously working as Peon pro rata at different branches of the Bank from 1988 to 2000 ; they got their wages through voucher; but during the year 2001-2002 , the management allowed them to work four days in a week and despite their working for more than 240 days in a year the management did not regularize them till date .But the witness (WW1) admits the management never issued them any appointment letter , the management paid them their wages on work, that as per recruitment rules, the management asked them to face the interview in which they though appeared, yet could not succeed, that the workman working in the Bank are considered permanent when they succeed in the interview organized by the management as per the recruitment rules.

WW2 Makhan Kundu states to have been working as Sub Staff at Telco Branch of the Bank from April, 1986 till 1994 continuously for four days a week, but from May-June, 1994, continuously the management released bonus in their favour equal to that of the permanent Sub staff fill 1996, therefore it was stopped .It is stated by him that that in spite of their rendering continuous service for more than 240 days in a year, the management did not regularize them. His admission also affirms that they were initially deployed by the Branch Manager as Sub Staff/Badali in place of permanent staff on leave/absence. He has got two certificates dt. 29.8.1992 and 26.2.1994 from the Bank (the copies thereof Extt. 2 & 2/1 respectively) on his application (Ext.M.1) for it. Admittedly, their engagement as Sub Staff by the management to discharge the duties at different branches was whenever required.

8. Likewise the statement of WW3 Narain Kr.Chakraborty reveals the engagement of five workmen including himself, Bhagwan Das Patel, Makhan Kundu, Ratan Roy Choudhary and R. Srinvas Rao as Badli Sepoy by the Branch Manager at Telco Town Branch of the Bank in Oct. 1989 till 1996, and payment of their wages pro-rata, thereafter at the rate of Rs. 100 per day wage as fixed by the management which had paid them bonus upto 1996. But he (WW3) failed to clarify which 14 out of 26 workmen are working under the management. It also transpires no issuance of any appointment letter to them by the management, and no mention of the date of stoppage from their working even In the written statement.

WW4 Satyajit Ghosh has also states to have been continuously working as Sub staff at Bistupur Branch of the Bank from 1992 till now. also to have got Bonus and other be befits from the management unto 1996 as the permanent Sub staff had got and he also claimed to have put his attendance for more than 240 days during the year 1995-96 under the management. But his admission also confirms no issuance of any appointment to him.

WW5 Swapan Kr. Adak as the Dy.General Secretary of the Union has also tried to indicate that all the workmen were appointed as Peon by the Br. Manager having power to do, as there was no procedure for it at the relevant time, and they were working for 240 days in block of 12 months or in a calendar year while raising the industrial dispute in the year 1997, but not any circular filed or proved by him as the Union Leader to show the existent power of the Branch Manager for appointment of the Sub Staff.

Lastly, the statement of WW6 Arun Chandra Das indicates his working as Badli Sepoy for permanent work in Bank of India from 1985 until he was stopped from duty in the year 1999. He has proved his six certificates all dateless except last one dt. 18.9.90 as Ext.2 series about his working days for 191 from August 1989 to April 1, 1990, 23 days in May 1990, 4 and 15 days in June, 1990, 5 and 4 days in July, 1990. He admits not to have got any appointment or interview letter and not to have completed 240 days at any branch of the Bank Apart from it, another set of photocopy of the documents on formal proof waive have been marked as Ext.W.1 to 1/115 as per the order No. 24 dt. 12.5.2005 of the Tribunal, Camp Court at Jamshedpur.

9. Whereas according 10 MWI Ravindra Bhusan Pd., Sr. Manager, Bank of India, H. R. Deptt. Jamshedpur as per the records of the management, none of the workmen was engaged through on interview as per the recruitment procedure of the management. These workmen were casually engaged by the management as Badli Sepoy in place of its employees on leaves whenever required, but they were never engaged through written test, interview and medical as per the recruitment procedure of the management; moreover neither the service condition nor the Standing Order applies to any Badli Sepoy, so the demand of the Union for their regularization is not justified. The Bank is not nationalized one. It has the procedure for the recruitment of sub staff. The witness (MWI) in his cross examination has asserted that since there was no procedure, so there was no document lo show their appointment contrary to the procedure.

10 in view of the contention of Mr. D. Mukherjee, Ld. Advocate for the Union/workmen concerned about their working for 240 days, he has cited the ruling 2005(105) FLR 1067 (SC) (CB) Manager RBI, Banaglore Vs. S. Mani wherein in reference to compliance with Sec. 25 F of the Industrial Dispute Act 1947 held that if the workmen had completed 240 days of service, they in their evidence had to state specifically to have worked for 240 days of service , as pleadings are not substitute for proof (Para 18).

Further the Ld, Counsel for the Union/workmen begs to cite the following rulings:

AIR 1984(SC)1683,, Wirkmen Vs Hindustan Lever Ltd.(CB) wherein it is held in regard to section 2(k), 7A, 10 Such, item 7 the Industrial Dispute also includes the question of their confirmation.

1990SCC (L & S) 174(CB), Bhagwati Pd Vs. Delhi State Mineral Development Corp., where Their Lordship held 'Once the appointments were made as daily rated workers and they were allowed to work for a considerable length of time, it would be have caused harsh to deny them the confirmation in the respective posts on The ground that they lack the prescribed educational qualification (Para 6). The present Reference has no such case of the education qualification for regularization.

AIR 1986(5C)132 (DB), H.D.Singh Vs.RBI concerning Sec 2(OO), 25-B "Retrenchment" under I.D.Act.1947 wherein it was held that the name of daily rated worker was struck off the rolls on ground of passing matriculate examination, so it was retrenchment in violation of Sec 25 B as invalid. There is no such case in the reference.

Lastly, (2009)2 SCC (L & S) 513 (DB) Maharashtra SRTC Vs. Casteribe Rajya Parivahan Karmchari Sanghatan, wherein reference to Ss 3O(1)(b),32 and Such IV. Item 6 of the Maharashtra Recognition of Trade Union and Prevention of unfair Labour Practice Act, 1971 (MRTU Act) it has been held that the power of industrial & Labour Court to take affirmative action under the said section is wide and still infact to accord permanency to employees affected by unfair practice; this power is not affected by Uma Devi (3) case for two reasons, first this Act was not at all considered by the Constitution Bench, panel second Uma Devi (3) Case limits Scope of powers of Supreme Court and High Court under Article 32 and 226 to issue direction for regularize in matters of public employment, so the direction of two industrial Courts to accord status of permanency with other benefits was heid justified

Here the moot is whether the workmen were affected by unfair practice But in view of admission of the aforesaid workmen witnesses that they were casually engaged as Badli workers m place of permanent employees on leave, Its answers comes negative.

11. Whereas in view of their admittedly working as Badli Sepoy after being engaged by the Branch Manager casually, but not their selection as per the selection procedure of the Bank, Mr. D.K. Verma, Ld. Adv. for the O.P./Management contend; that workmen are not entitled to their regularization, moreover none of them had admittedly completed their continuous service for 240 days in any calendar year. Mr.Verma,Learned Counsel for the Opp./Management has quoted the following rulings:

2006 SCC (L & S) 753, State of Karnataka Vs. Uma Devi wherein it was held that absorption, regularisation, or permanent continuation of temporary, casual, daily wage or *ad hoc* employees appointed/recruited is de hors the Constitutional Scheme of Public employment on issuance of direction by Court, as it amounts to creating another mode of public employment which is not permissible.

2009 SCC (L & S) Vol.1943,Official Liquidator Vs; Dayanand & Ors.,wherein it has been held that the judgment of the Hon'ble Supreme Court in Uma Devi Case has a binding effect to all Court and Tribunal, and that in regularization of temporary contractual casual daily wages and *ad hoc*, employees are not entitled for it.

Lastly, keeping in view the verdict of the Apex Court in case of Pinaki Chatterjee & Ors Vs. Union of India & Others 2(000)(2) SCC (L & S)259 in the light of the Law laid down in Uma Devi Case Mr. Verma,Ld Counsel for the Opp./Management submits, as held therein, that recruitment could not be made contrary to the statutory requirement rules in violation of Article 16 & 14 of the Constitution of India; as such the claim for regularization animation on the basis of engagement as daily; rated casual laborers is unmaintainable.

12. On perusal and consideration of the materials available on the case record, I find these facts as under:

- (i) It is indisputable fact that the workmen were casually engaged on pro-rata daily wages by the Management as Badli Sepoy whenever required for relevant periods its permanents employees on leave, but since engagement was casual. So they were never appointed against the permanent employees of the Bank as the procedure/rules of the O.P./Management warrants;
- (ii) None of the workmen *prima facie* has completed 240 days in any year in any period of twelve calendar months preceding the 9th April, 1999,the date with the reference to which calculation is to be made for their actual working days under the employer as required under Sec. 25B of the Industrial Dispute Act, 1947. Payment of Bonus to an temporary/casual worker like Badli Sepoy for minimum 30 days working as under the Bonus Act can not be a ground of regularization. The ground of Bonus payment to any of the workman for casual working for 30 days as under Sec 8 of the Payment of Bonus Act.,1965 can not be a good ground for any such claim for regularization
- (iii) An unengagement of casual Badlee Sepoy by the Employer/ Bank Management casually as in the present case is not a termination in the eye of the Labour Law.

The argument of Mr. D. Mukherjee, the Learned Advocate for the Union/workmen appears to he implausible and unpersuasive.

In the result, it is, in the terms of the reference, hereby

ORDERED

The Award be and the same is passed that the action of the Management of Bank of India in not regularizing the

service of purely temporary sub-staff as given in Annexure "A" is quite justified. Hence, none of the workmen is entitled to any relief.

KISHORI RAM, Presiding Officer

LIST OF THE WORKMEN IN ANNEXURE

ANNEXURE-A

Sl. No.	Name	File No.
1.	Sri N.R. Rao	15
2.	Sri R. Srinivas Rao	5
3.	Sri Bhagwan Das	7
4.	Sri Makhun Kundu	10
5.	Sri Ratan Ray Choudhary	9
6.	Sri Narayan Kr. Chakraborty	8
7.	Sri Tspan Das	12
8.	Sri Subroto Mukherjee	2
9.	Sri Shatrgan Gope	1
10.	Sri Samir Kumar Ghosh	13
11.	Sri Sayendra Thakur	22
12.	Sri Md. Faium	17
13.	Sri G. K. Murty	14
14.	Sri D.K.Thakur	3
15.	Sri Mahendra Kr.Chowbey	16
16.	Sri Chandra Bhanu Gupta	6
17.	Sri Bharat Lal Tanti	23
18.	Sri A.K. Das	11
19.	Sri Satayjit Ghosh	24
20.	Sri Ram Murat	
21.	Sri Shyam Kr. Gope	25
22.	Sri Niraj Kumar Thakur	
23.	Sri Bajrangi Thakur	27
24.	Sri Biswanath Modak	26
25.	Sri Ajay Karwa	28
26.	Sri S.C. Bachra	29

नई दिल्ली, 6 फरवरी, 2014

का.आ. 661.—औद्योगिक अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय चैन्नई के पंचाट (81/2007) प्रकाशित करती है, जो केन्द्रीय सरकार को 06.02.2014 को प्राप्त हुआ था।

[सं एल-12012/95/2007- आई आर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 6th February, 2014

S.O. 661.—In pursuance of Section 17 of the Industrial Disputes Act, 1947(14 of 1947), the Central Government hereby publishes the Award Ref. No. 81/2007 of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the industrial dispute between the management of Punjab National Bank and their workmen, received by the Central Government on 03.02.2014.

[No. L-12012/95/2007-IR(B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT CHENNAI

Friday, the 3th May, 2013

Present : A.N. JANARDANAN, Presiding Officer

INDUSTRIAL DISPUTE No. 81/2007

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Punjab National Bank and their Workman)

BETWEEN:

Sri P. Sekaran : 1st Party/Petitioner
Vs.

The Functional Manager (HRD) : 2nd Party/Management
Punjab National Bank
160, Grems Road
Chennai-600006

Appearance:

For the 1st Party/Petitioner : M/s Balan Haridas,
Advocates

For the 2nd Party/Management : M/s S. Jayaraman &
H. Balaji, Advocates

AWARD

The Central Government, Ministry of Labour and Employment vide its Order No. L-12012/95/2007-IR(B-II) dated 27.11.2007 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

"Whether the order of dismissal without notice imposed on Sri P. Sekaran by the Management of Punjab National Bank, Chennai is legal and justified? If not, to what relief the workman is entitled?"

2. After the receipt of Industrial Dispute, this Tribunal has numbered it as ID 81/2007 and issued notices to both sides. Both sides entered appearance through authorized representative. On challenge of the order dated 18.01.2008 not permitting the petitioner to engage a legal practitioner,

further proceedings in the ID stood stayed by the Hon'ble High Court of Madras by order dated 12.02.2008 and by the order dated 30.07.2012 in WP No. 3562 of 2003, the said order was set aside, the matter was remanded for fresh disposal in a time-bound manner and the petitioner was permitted to engage a counsel with similar fight to the Respondent Management. Accordingly both sides made representation through their respective counsel. Afterwards both sides filed their claim, counter and reply statement as the case may be.

3. As per order dated 25.02.2013 this Court passed ex-parte award ordering modification of the punishment of dismissal from service without notice to one of Compulsory Retirement entitling the petitioner to superannuation benefits. As per order dated 18.03.2013 on IA 17/2013 at the instance of the Respondent the ex-parte order was set aside and the ID was restored to file. When the matter stood posted for further proceedings no further evidence was adduced on either side. Even the petitioner examined WW1 in Chief was not chosen to be cross-examined by the Respondent.

4. The averments in the Claim Statement briefly read as follows:

Petitioner who had joined service of the Respondent as a Clerk-cum-Godown Keeper on 23.04.1984, thereafter on successive transfers while was working at West Boulevard Branch, Trichy was suspended on 22.04.2003 pending enquiry. He was issued Show Cause Notice dt 23.09.2003 regarding renewal of three Fixed Deposit Receipts and alleged taking away of Pay Order relating to one Sri C. Velusamy. On 19.11.2003 he denied the allegations. Thereafter he was issued Charge Memo on 04.11.2004 which he also denied in the reply. An enquiry was held without considering his explanation. Five witnesses on the side of the Bank and two witnesses on the defence side were examined. By the finding the charges were held proved to which petitioner offered comments stating it to be perverse. Disciplinary Authority concurring with the finding by Show Cause Notice dated 18.03.2006 proposed the punishment of dismissal without notice. He was dismissed from service without notice on 31.03.2006. Appellate Authority by a cryptic order dated 30.06.2006 dismissed the appeal in a mechanical manner without applying mind. The allegations are untrue. One C. Thangaraj took a Fixed Deposit on 14.11.1997 for Rs. 80,000 for 13 months which got matured on 14.12.1998 Another Fixed Deposit for Rs 85,000 dated 14.11.1997 for 13 months and Fixed Deposit for Rs. 85,000 dated 14.11.1997 for 13 months were also matured as early as 14.12.1998, but not renewed. Hence the three Fixed Deposits were carried forward to the overdue Fixed Deposit Ledger as per practice and rule. The petitioner prepared vouchers signed

by the Officer, the enclosures to which were stapled. He also prepared ledger sheet. The Fixed Deposit Receipts were thereafter generated by the concerned and same signed by the Manager and Officer. Delivery of the receipts to the party was not done by the petitioner. The Fixed Deposits of Sri C. Thangaraj was renewed (or Rs. 88,102, that of S. Annalakshmi was renewed for Rs. 93,609 and third was renewed for Rs. 93,609. The three Fixed Deposits were again renewed and entries and vouchers were made by Vasudevan and Cashier Mr. Nair. Pay Orders also have been issued by the Officer and Manager concerned. Petitioner was not involved in the process of renewal. There is no mention of token under which the payments were made. Except the voucher for the first renewal petitioner had no part in the subsequent renewal or towards the issuance of the Pay Order or encashment thereof. No complaint has been made for non-receipt of the FD proceeds by Annalakshmi and Vasudevi. Petitioner, a Clerk had only renewed the Fixed Deposits as per Bank Manager's instructions. Once the voucher is authorized by the Manager it only confirms the transaction as perfect in all respects and the writing of the voucher is no longer questionable. Manager Vishwanathan has admitted his having signed the voucher and the Fixed Deposit Receipts. The enclosures to the voucher dated 07.03.2001 were missing. According to Arockiadass when enclosures are not available it will be reported to the Branch Manager. There is no legal evidence to show that petitioner was following up the matter and that the payment out of the Fixed Deposit was received by the petitioner. T. Narayanan, Son of Sri Thangaraj as claimed has not mentioned in Ex.-PD24 letter that he had met the petitioner and informed his father's death. T. Narayanan never met the petitioner. While others were punished with Increment cut petitioner is dismissed without notice There is no evidence to show that petitioner had removed the cash order on 26.02.2003 The Cash Order being time-barred no question of the stale Cash Order being made use of to open Fixed Deposit on the same at WB Road Branch does arise. Based on the voucher Fixed Deposit was made in the name of Sri Velusamy without obtaining Account Opening Form. Since petitioner was canvassing Fixed Deposit he was merely asked to obtain the AOF form the customer. How voucher for making Fixed Deposit was made on the basis of a stale Cash Order. It was not petitioner who opened the ledger sheet. C. Velusamy's National Savings Loan Account had been closed on 03.10.2001. So there was no necessity for Cash Order dated 19.04.2002 for Rs. 10,700 to be in Velusamy's name. The letter itself will show that all was not well in the industrial area branch. Enquiry Officer held the charge proved with tutored

deposition of K. Ramanan, Officer and Mr. R. Thiagarajan. They had candidly admitted that the debit sundries and credit fixed deposit voucher and fixed deposit ledger were authorized by them. It was also admitted that Cash Order was received by Clerk, Valliappan and he prepared the voucher for including the instrument in the day's clearing. He was not examined without any reason. Petitioner has been made a scapegoat for the folly of others. There is no application of mind by the Enquiry Officer in entering the finding. He exceeded his brief and split up the charges on presumption and assumption. Petitioner has rendered 22 years of unblemished service and he hails from a very poor family. He is not gainfully employed. He cannot be punished on an allegation not proved in the enquiry. Enquiry held is violating principles of natural justice. As per HO guideline any payment above Rs. 20,000 has to be made in Cash Order and the recipient has to prove his identity. It is alleged by the officials that the petitioner identified the customer and only on that basis they have passed the payment. Petitioner has not identified the beneficiary. ID raised having failed the reference is occasioned. Petitioner is imposed capital punishment to save the higher-ups. Punishment is grossly disproportionate to the charges. Tribunal is to interfere under Section-IIA of the ID Act. Petitioner is to be reinstated with all benefits.

5. Counter Statement averments bereft of unnecessary details are as follows:

Petitioner was charge sheeted for preparing on 07.03.2001 vouchers for three Fixed Deposits dated 14.11.1997 favouring Sri C. Thangaraj, Ms. Annalakshmi and Vasudevi for Rs. 80,000, Rs. 85,000 and Rs. 85,000 respectively for 48 months from 14.12.1998 without any letter of request from the beneficiary or authority. The FD Accounts were renewed without receiving the original FDRs despite the fact that there were unauthenticated alterations in maturity value and due date. Rate of interest and due date in the ledger sheets needed authentication. Fresh FD Receipts were issued at the time of renewal instead of noting the details in the original FDRs, not produced. Instead of the old ledger sheets he carried out all the details of the FDRs to a new ledger sheet for making the alternations in initials of the beneficiary of FDR Account Number 34070 of Thangaraj from C to G and also changing the address of the party. He had also created record in the new ledger sheets as if fresh AOF Form-15H and photographs were obtained and in fact neither AOF nor Form-15H and photograph were obtained. The purpose of taking fresh AOF and photograph were not recorded without ensuring whether the originals of the same are available or not. He prepared the

vouchers for renewal of FD Account of Sri Thangaraj knowing well that the party was no more and reported expired. On 17.12.2002 FDR Account 3470 was renewed as ordinary FDR No. 464 for a period of 30 days for Rs. 1,33,363 due on 13.01.2003 with maturity value of Rs. 1,33,884 in the name of G. Thangaraj. On 13.01.2003 the FDR Account was closed and the proceeds of the same were paid by Cash Order dated 13.01.2003 in the name of G. Thangaraj to a person on 14.01.2003. He also verified the signature of G. Thangaraj on the back of Cash Order without any authority knowing fully well that the signature does not belong to the original beneficiary. Similarly FDRs favouring Ms. Annalakshmi and Vasudevi were renewed as ordinary Fixed Deposit A/c No. 465 for Rs. 1,41,699 and Account No. 466 for Rs. 1,41,699 both due on 13.01.2003 respectively. On 21.01.2003 FD Accounts in the name of Ms. Annalakshmi and Vasudevi were closed for maturity value of Rs. 1,42,252 each keeping part of amount of Rs. 1,00,000, each which were placed in ordinary Fixed Deposit for 91 days. Balance amount of Rs 42,252 as interest was issued by Cash Order dated 21.01.2003 each in the names of Ms Annalakshmi and Vasudevi. The Cash Orders were paid to some fictitious persons in their names on 26.02.2003. On 26.02.2003 petitioner visited Branch Office Industrial Area, Trichy though he was posted at WB Road, Trichy on the pretext of collecting his Income Tax details and verified the signatures of the beneficiary of the above Cash Orders without authority knowing that the signatures do not belong to the original beneficiary. On 17.1.2002 he posted the transactions of renewal of all the above three FDRs in the ledger through computer. He had requested the Cashier to make the payments in 500 denominations. He was present on the date of payment of the proceeds of all the FDRs to some persons and was instrumental in getting the payment fraudulently to some fictitious persons. On 26.02.2003 during visit to the Branch he had unauthorizedly taken Cash Order dated 19.04.2002 for Rs. 10,700 favouring Sri C. Velusamy from the Loans Department and handed over at BO, WB Road for placing the FD in the name of Sri Velusamy without AOF or other documents. For the same FDR was prepared on 28.02.2003. Sri Velusamy informed that he neither received nor presented the Pay Order to BO, WB Road. In the departmental enquiry held he was given all opportunities and principles of natural justice were observed which is demonstrable from the proceedings itself. Preparation of renewal vouchers by the CE is the starting point of the fraud. Even if under the instructions of the Branch Manager he should have noted so and marked caution in the ledger vouchers, etc. It is proved that CE had influenced the payment by personally bringing the vouchers to the Manager

telling that he knew the depositor. That his confession statement was obtained by coercion is not proved. In fact by letter dated 12.04.2003 in his own handwriting he admitted the charges, though later withdrawn. There is no proof of any prejudice having been caused to the petitioner in the enquiry. There is no hostile discrimination. The orders of the authorities are speaking manifesting application of mind. There is nothing perverse in the orders. There is no proof of Manager having given instructions for renewal of the FDRs. The charges have been properly proved in the enquiry. There is no violation of principles of natural justice. Finding is not perverse. The punishment is commensurate with the gravity of the misconduct. Section-11A of the ID Act is not to be applied. ID is to be dismissed.

6. Rejoinder averments in a nutshell are as follows :

In the absence of legal evidence the finding rendered is perverse. The supervisory officials for their misconducts should have been jointly enquired into with the petitioner.

7. Points for consideration are:

- (I) Whether the dismissal without notice imposed on Sri P. Sekaran is legal and justified?
- (II) To what relief the concerned workman is entitled?

8. The evidence consists of oral evidence of WW1 in Chief without cross-examination and Ex.W1 to Ex.W73 marked with no evidence on the side of the Respondent.

Points (i) & (ii)

9. Heard both sides Perused the records and the evidence adduced on behalf of the petitioner by way of Proof Affidavit in lieu of Chief Examination. The sum and substance of the arguments on behalf of the petitioner advanced by his learned counsel are that Invoking Section-11-A of the ID act a re-appreciation of the evidence is to be had to decide whether there is perversity with regard to finding and whether the punishment has gone disproportionate to the gravity of the misconduct. Petitioner rendered unblemished service during the past 19 years. Documents, evidence the acts of the petitioner to have been authorized by the Officers under their signatures. Entire payments made as per the fixed deposit receipts also have been authenticated under the signatures of the Officers. The payment without token across the counter do not remain explained. Documents do not show the charges to have been established based on legal evidence. The misconduct of the nature of misappropriation of money requires to be proved to the hilt. In the absence of the examination of the beneficiaries who received the benefits and the complainant prejudice is caused to the petitioner. Petitioner is not a pension optee. Confession is later retracted and is denied as correct. So confession is of no value to advance the case of the petitioner despite which

fact the same is relied on for arriving at the finding. The charge is alleging serious lapses of the petitioner for some fraud noticed to have occurred misappropriating moneys covered by Fixed Deposits by someone not clearly brought home. But the petitioner is sought to be implicated for misappropriation of money. For the mishap an award staff alone could not be held responsible without the junction of others. Discernibly there ought to be lapses on the part of more employees. Petitioner, a clerical staff has no role for the payment of money. Merely for reason of being a junior Officer he has been discriminated in the matter of meting of the punishment; the other Officers suffered only an increment cut for their role in the misconduct. Petitioner acted only upon on the instructions of the Officers. Petitioner is put to economic death by way of dismissal without notice.

10. Going by the records especially the enquiry proceedings and the finding it is brought home that there is no force in the contentions on behalf of the petitioner that the enquiry has been conducted violating the principles of natural justice or that the finding is perverse. It could well be seen that the petitioner has had full opportunity to participate in the enquiry, as pleaded and he did examine witnesses on his side. Allegation that the finding is perverse could also be found to be totally false. There is also the confession statement of the petitioner, later alleged as having been obtained on coercion, but without being substantiated. While he alleges the enquiry as being not fair and that the finding is perverse there is no proof of that or prejudice. There is nothing wrong with the enquiry. There is no perversity in the finding. Any material logically probative to a prudent mind and is credible may form basis of such conclusion. It is not adequacy of evidence, but some legal evidence which is required to arrive at the conclusion. From the enquiry proceedings and records one can come to the conclusion that there is nothing wrong with the enquiry and that the finding is not perverse.

11. Reliance was placed on behalf of the petitioner to the decisions of the Apex Court in :

MAN SINGH VS. STATE OF HARYANA AND OTHER (2008-12-SCC-331) wherein it held "20. We may reiterate the settled position of law for the benefit of the administrative authorities that any set of the repository of power whether legislative or administrative or quasi-judicial is open to challenge if it is so arbitrary or unreasonable that no fair-minded authority could ever have made it. The concept of equality as enshrined in Article-14 of the Constitution of India embraces the entire realm of State action. It would extend to an individual as well not only when he is discriminated against in the matter of exercise of right, but also in the matter of imposing liability upon him. Equals have to be treated equally even in the matter of executive administrative action. As a

matter of fact, the doctrine of equality is now turned as a synonym of fairness in the concept of justice and stands as the most accepted methodology of a governmental action. The administrative action is to be just on the test of "fair play" and reasonableness. *Roop Singh Negi VS. Punjab National Bank and Others* (2009-2-SCC-570) wherein it held "D. Service Law - Departmental enquiry- Admission/ Confession—Proof of—Appellant alleged to have confessed to police that he was involved in stealing of bank draft book — Held, so called confession itself was not sufficient—Some evidence ought to have been brought on record that appellant was involved in stealing—Evidence Act, 1872 — S. 25".

12. Extracts by way of main requirements of manual business continuity in Centralized Banking Branches (CBB) under Chapter-15 pointed out on behalf of the petitioner are as follows :—

- Morning checking with the vouchers will be done on daily basis by an Authorized Officers as per guidelines given in this Book of Instruction. "Errors and difference be rectified and recorded under signatures in the control registers".
- Before making any payment, the authorized official/CTO shall physically verify signatures from the specimen signature slip available at the Branch.
- All the deposits, which are repayable after notice or repayable after a certain period (1) where the amount of deposit (2) aggregate amount of deposit and (3) such deposit repayable together with interest *i.e.* Rs. 20,000/- or more has to be made by account payee cheque or account payee bank draft. The repayment will have to be effected in either of the modes prescribed under the Income Tax Act.
- As a Cash Order is not transferable, it may only be paid to the payee, on identification.

13. Arguments on behalf of the Respondent advanced by its learned counsel are that there is no challenge against the fairness of the enquiry held. When a Fixed Deposit is matured its renewal should be on request from the depositor with the production of the original FD Receipt. It is the petitioner who started the process of renewal of the Fixed Deposit Receipts (FDR) without any request or production of the originals thereof. It is violating the norms and rules. The conduct is abnormal. Instead of continuing in the old ledger he carried over the entries into the new ledger. FDR of S. Thangarasan was one among them who was then no more. It was also paid on his behalf. The act of the petitioner is violative of the norms and procedures and without authority. It was some third party to whom the proceeds were paid on behalf of the deceased. The petitioner has not explained the charges. The persons to whom payments have been made are fictitious persons. There is also virtual admission by the petitioner regarding the fraudulent

doings. He is simply alleging others to be responsible for the felony. Intention is discernible in the conduct of the petitioner in creating the new ledger sheet to cover up the fraud he was about to practice. The finding is based coupled with the evidence and the confession statement given by the petitioner. They are more than any material logically probative to a prudent mind to arrive at the conclusion that he is responsible for the fraudulent acts of renewing Fixed Deposits to wrongfully enrich him to the detriment of the depositors including dead persons whose deposits remained not extended even after the maturity dates. The misconduct charged against the petitioner stands proved with the adequate evidence not only with any material logically probative to a prudent mind to arrive at the conclusion reached, which is usually enough. To reap the benefit of the money sought to be misappropriated with a scheming mind the Cash Order was prepared or got prepared by the petitioner coinciding with his arrival at the Bank Branch at Trichy. Though no loss has occasioned to the Bank by means of the fraudulent transactions that cannot be a valid defence in favour of the petitioner. The Bank employee is expected to observe absolute integrity and honesty in his dealings with the Bank as has been consistently and repeatedly held by the Hon'ble Apex Court of India. An employee misappropriating money deserves to be visited with the capital punishment of dismissal from service. There is no evidence to substantiate the contention on behalf of the petitioner that the Manager of the Bank instructed the petitioner to prepare the renewal of vouchers of the FD Receipts. Reliance was placed on behalf of the Respondent reading out the decision of the Apex Court in 2005-1-SCC-113 to substantiate the above.

14. I do not see that the decisions relied on behalf of the petitioner are squarely applicable to the facts of the present case to his advantage.

15. Now coming to the punishment, the question is whether the same is shockingly disproportionate to the gravity of the misconduct. While from the proved facts the petitioner could legitimately be found guilty of the misconduct and has been so found what remains for consideration is regarding his punishment. While an employee like the petitioner with propensity to commit misconduct as in the present case is not safe or warranted to be allowed to continue in service, he must inevitably be sent out. What the Management has done is only that and nothing short of that. He deserves no leniency. There is no role for misplaced leniency or sympathy to such a delinquent as the petitioner. Therefore the punishment is only to be upheld and the petitioner is not entitled to any relief. Ordered so.

16. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me the open court on this day the 3rd May, 2013)

A.N. JANARDANAN, Presiding Officer

Witnesses Examined:

For the 1st Party/Petitioner: WW1, Sri P. Sekaran
 For the 2nd Party/Respondent : None

Documents Marked :**On the Petitioner's side**

Ex. No.	Date	Description
Ex. W1	07.03.2001	Debit CA QD Transfer Voucher
Ex. W2	07.03.2001	Debit FD MBD 3470 G Thangaraj transfer voucher
Ex. W3	07.03.2001	Debit FD MBD 3471 S. Annalakshmi transfer voucher
Ex. W4	07.03.2001	Debit FD MBD 3472 S. Vasudevi transfer voucher
Ex. W5	07.03.2001	PD 5 - FDMBD receipt A/c No. 3470
Ex. W6	14.11.1997	Copy of FD MBD Ledger Sheet in the name of G Thangaraj A/c No. 3470
Ex. W7	14.11.1997	Copy of FD MBD Ledger Sheet in the name of S. Annalakshmi A/c No. 34571
Ex. W8	14.11.1997	Copy of FD MBD Ledger Sheet in the name of S. Vasudevi A/c No. 3472
Ex. W9	07.03.2001	Copy of FD MBD Ledger Sheet in the name G. Thangaraj A/c No. 3470
Ex. W10	07.03.2001	Copy of FD MBD Ledger Sheet in the name of S. Annalakshmi A/c No. 3471
Ex. W11	07.03.2001	Copy of FD MBD Ledger Sheet in the name of S. Vasudevi A/c No. 3472
Ex. W12	12.04.2003	Letter of the Petitioner
Ex. W13	19.04.2002	Copy of Cash Order favouring C. Veluchamy
Ex. W14	13.01.2003	Copy of cash Order favouring Thangaraj
Ex. W15	21.01.2003	Copy of Cash Order favouring S. Vasudevi
Ex. W16	21.01.2003	Copy of Cash Order favouring S. Annalakshmi
Ex. W17	28.02.2003	Copy of Clearing Credit Sundries Voucher
Ex. W18	01.03.2003	Copy of Transfer Debit Sundries voucher
Ex. W19	01.03.2003	Copy of Transfer voucher for FD Ordinary
Ex. W20	01.03.2003	Copy of FD Ordinary Receipt in the name of Veluchamy
Ex. W21	01.03.2003	Copy of Leger Sheet in the name of Veluchamy
Ex. W22	27.10.1998	Copy of Death Certificate of S. Thangarasan Munaiyathiriyar
Ex. W23	18.11.1993	Copy of Legal Heir Certificate of PD 20-Thangarasan Munaiyathiriyar

Ex. W24	29.3.2003	Letter of the Petitioner
Ex. W25	14.05.2005	Letter of the PO Furnishing list of additional 4 documents
Ex. W26	19.11.2004	Letter of the Petitioner
Ex. W27	February 2003	Copy of the Attendance Register
Ex. W28	02.04.2003	Copy of letter of V Veluchamy
Ex. W29	28.02.1997	Copy of demand/term loan sheet of C. Veluchamy
Ex. W30	01.10.2001	Computer Print Out of Statement of Account of Veluchamy
Ex. W31	01.10.2001	Computer Print Out of Statement of Account of Veluchamy
Ex. W32	22.02.2001	Copy of FD due date reminder
Ex. W33	16.06.2005	Letter of the Senior Manager
Ex. W34	14.06.2005	Letter of the PO addressed to the Senior Manager
Ex. W35	14.11.1997	Copies of three counter foils
Ex. W36	-	Copies of FB MBD Receipts of A/c No. 3470
Ex. W37	06.01.2005	Letter of The Petitioner
Ex. W38	14.11.1997	Copy of FD MBD Receipt issued to Thangaraj Ex.W39
		Copy of FD MBD Receipt issued to S. Annalakshmi
Ex. W40	14.11.1997	Copy of FD MBD receipt issued to Vasudevi
Ex. W41	07.03.2001	Counter Foil of FD MBD Receipt of Thangaraj
Ex. W42	14.11.1997	Copy of FD MBD Receipt issued to Vasudevi with backside of the receipt
Ex. W43	14.11.1997	Counter Foil of FD MBD receipt of Thangaraj with backside of the receipt
Ex. W44	13.01.2003	Debit Transfer Voucher
Ex. W45	13.01.2003	Copy of the computer print out for closing of FDO A/c
Ex. W46	07.03.2001	Copy of FD MDD receipt
Ex. W47	13.01.2003	Copy of Cash Order
Ex. W48	21.01.2003	Copy of the Computer Print Out for closing of FDO A/c
Ex. W49	21.01.2003	Copy of Computer Print Out for interest certificate
Ex. W50	21.01.2003	Copy of Interest Certificate
Ex. W51	21.01.2003	Copy of Credit for Cash Orders
Ex. W52	21.01.2003	Copy of Cash Orders
Ex. W53	21.01.2003	Copy of Transfer Credit
Ex. W54	07.03.2001	Copy of Long Book
Ex. W55	-	Ledger Sheet
Ex. W56	-	Ledger Sheet
Ex. W57	17.12.2002	Ledger Sheet

Ex. W58	22.04 2003	Suspension Order
Ex. W59	21.09.2003	Charge Memo
Ex. W60	19.11.2003	Reply to Charge Memo
Ex. W61	04.11.2004	Charge Sheet
Ex. W62	19.11.2004	Reply to Charge Sheet
Ex. W63	24.11.2004	Enquiry Notice
Ex. W64	20.12.2004	Enquiry Notice
Ex. W65	06.01 2005	Enquiry Proceeding
Ex. W66	-	Presenting Officer's report
Ex. W67	10.12.2005	Reply to Presenting Officer's report
Ex. W68	13.01.2006	Enquiry Report
Ex. W69	07.02.2006	Reply to Enquiry Report
Ex. W70	18.03.2006	Second Show Cause Notice
Ex. W71	30.06.2006	Order of the Appellate Authority
Ex. W72	31.03.2006	Dismissal Order
Ex. W73	09 05.2006	Letter to Appellate Order

On the Management's side

Ex. No.	Date	Description
	N/A	

नई दिल्ली, 6 फरवरी, 2014

का.आ. 662.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) का धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक आफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/ श्रम न्यायालय चण्डीगढ़ के पंचाट (संदर्भ संख्या 590/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06/02/2014 को प्राप्त हुआ था।

[सं एल-12011/142/2001-आई आर(बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 6th February, 2014

S.O. 662.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 590/2005) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, No. II Chandigarh as shown in the Annexure, in the industrial Dispute between the management of Bank of India and their workmen, received by the Central Government on 06/02/2014.

[No. L-12011/142/2001-IR(B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

**IN THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT-II,
CHANDIGARH**

PRESENT: SRI KEWAL KRISHAN, Presiding Officer.

Case I.D. No. 590/2005

Registered on 22.8.2005

The General Secretary,
Bank of India Empls. Association,
C/o Bank of India, Sector 17B,
Main Branch, Chandigarh-160017.

...Petitioner

Versus

The Chief Regional Manager,
Bank of India, 579, Model Town,
Ludhiana.

...Respondent

APPEARANCES

For the workman Sh. R.P. Rana Adv.

For the Management Sh. Ranjan Lohan Adv.

AWARD

(Passed on 9.12.2013)

Central Government *vide* Notification No. L. 12011/142/2001-IR (B-II) Dated 30.10.2001, by exercising its powers under Section 10 Sub-Section (1) Clause (d) and Sub-Section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal:

"Whether the action of the management of Bank of India in awarding the punishment of withdrawal of Special Allowance of Head Cashier 'E' to Sh. K.K. Garg is legal and just? If not, what relief the concerned workman is entitled to?"

In response to the notice, the workman appeared and submitted statement of claim pleading that he was opposing the undue accommodation extended to certain officials by Sh. D.L. Singal, Branch Manager, of Faridkot Branch who connived with the disciplinary authority and got issued a show cause notice. He also wanted to deprive the workman of the special allowance of 'Head Cashier Category E' with a view to accommodate one of his favourite employees. That the charge-sheet dated 22.3.2000 was issued to him and within the framework of the charge-sheet, the inquiry Officer was appointed. This shows that the disciplinary authority was acting with a closed mind. The Inquiry Officer conducted the inquiry and submitted a report and on its basis a penalty of withdrawal of special allowance of 'Head Cashier Category E' was imposed upon him. That the said punishment is illegal as the inquiry was conducted against the principles of natural justice as he was not provided proper opportunity to lead defence evidence and to produce the documents which would have shown *mala fide* intention of the Branch Manager. That the findings recorded by the Inquiry Officer on various charges are without any basis and are illegal. That the disciplinary authority did not consider the reply to the show cause notice issued to him for awarding the punishment. He filed a detailed appeal before the Appellate Authority who without considering the points taken therein, dismissed the appeal.

Thus the punishment awarded is illegal, and the punishment order as well as the order passed by the

Appellate Authority be set aside with all the consequential benefits to the workman.

The management filed written reply pleading that the workman committed misconduct and he was charge-sheeted. The Inquiry Officer was appointed who conducted the inquiry as per procedure and the workman was given due opportunity to cross-examine the witnesses and to lead its evidence. Thereafter the inquiry officer submitted its report and on its basis, a show cause notice was issued to the workman. After considering his reply, the disciplinary authority passed the impugned order which is legal and valid.

In support of its case, workman appeared in the witness box and filed his affidavit reiterating the averments as contained in the statement of claim.

On the other hand the management has examined P.J.S. Walia, Chief Manager, who supported the case of the management as set out in the written statement.

I have heard Sh. R.P. Rana, counsel for the workman and Sh. Ranjan Lohan, counsel for the management and perused the file carefully.

It was vehemently contended by the learned counsel for workman that inquiry was conducted against the principle of natural justice and the workman was not allowed to prove and produce documents which would have shown the *mala fide* intention of the Branch Manager and the workman was not allowed to lead his defence properly which has caused prejudice to the workman. He has further contended that the intention of the Branch Manager is clear from the notices issued on 7.2.2000 and submitted that two separate notices were issued by the Branch Manager to the workman on the same day, and the workman did not commit any act amounting to misconduct and the inquiry initiated against it was totally illegal.

I have considered the contention of the learned counsel for the workman.

I have perused the copy of the notice dated 7.2.2000 Exhibit W2 and Exhibit W3 respectively and its perusal shows that the first one issued to the workman for delaying the normal routine work deliberately and the second notice was non-performance/completion of allotted work. If the workman committed the said two acts, the Branch Manager was within his rights to call for his explanation and it cannot be said from the mere assertion that the Branch Manager was acting *mala fide*. The workman has levelled allegations against the Branch Manager that Branch Manager was accommodating certain officers and was marking them on duty when they were absent and even has gone to the extent that the Branch Manager wanted to help a lady employee to get 'Head Cashier Category E Special Allowance' but there is no evidence on the file except the mere assertion of the workman in his affidavit to support these allegations. Thus it cannot be said that Branch Manager acted at any time even with *mala fide* intention.

The following charge-sheet was issued to the workman:—

"That on 7.2.2000, you were instructed by Sh. Anil Bhagat, Assistant Manager to take cash receipt but you did not obey his instructions of receiving the cash from customers. In this way customer service was badly effected for two hours. On giving you written instructions, you accepted the cash after two hours but you did not release the cash/payment vouchers timely. Branch had advised other staff member to write the cash receipt vouchers in receipt book at about 1.00 P.M. for avoiding the further delay in preparing and issuing the DDs & TDRs to the customers. Further, you released the payments vouchers after 4.30 P.M. and had created problems for other staff members for completing the bank's work well in time. Moreso, you deliberately delayed closure of cash at 6.30 P.M. on 7.2.2000.

That you had not written the Head Office & TDR Supplementaries of 4.2.2000 and 5.2.2000 resulting delay of written Cash Book, General Ledger & GLB. This allotted work was not completed by you on 7.2.2000 even after the specific instructions of the Manager and this job was completed by other Clerk avoiding further delay in Bank's work."

The Inquiry officer after examining the evidence led before him, submitted a detailed report concluding that both the charges were proved against it. It clearly find mention in the report that all the relevant documents were allowed to be produced and even the workman was given several opportunities to lead his defence evidence and it was made clear to him on four different dates that no further adjournment would be given. The workman examined seven witnesses in his defence and if no further adjournment was given after 1.7.2000, it cannot be said that he was denied a fair and proper opportunity to lead defence evidence. Again there is nothing on the file to conclude that the declining of further opportunity has caused any prejudice to him in any way except the bare assertion that the production of the documents and the examination of the witness have pointed finger towards the Branch Manager which is totally irrelevant as the workman himself did not perform his duties properly on 7.2.2000.

Thus the workman was properly charge-sheeted and during the inquiry he was defended by an official of the Employees' Association and the witnesses examined by the management were duly cross-examined and the workman also led its evidence, and thus, there is no defect in the conduct of the inquiry nor it has been shown that the same was conducted in violation of any Rules. In the circumstances it is held that the inquiry is fair and proper.

On receipt of the inquiry report the punishing authority issued show cause notice to which the workman filed reply. After considering the reply and giving personal hearing to

the workman, the impugned penalty was imposed which cannot be termed, considering the misconduct on the part of the workman, to be improper or excessive and do not call for any interference.

In result, it is held that the awarding of the punishment in question is legal and just and workman is not entitled to any relief and reference is answered accordingly. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 6 फरवरी, 2014

कांआ 663.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) क धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक आफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण श्रम न्यायालय जबलपुर के पंचाट (संदर्भ संख्या 299/97) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06/02/2014 को प्राप्त हुआ था।

[सं एल-12012/236/97-आई आर (बी -II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 6th February, 2014

S.O. 663.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 299/97) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of Bank of India and their workmen, received by the Central Government on 06/02/2014

[No. L-12012/236/97-IR(B-II)]

RAVI KUMAR, Section Officer

ANNEUXRE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR**

NO. CGIT/LC/R/299/97

Presiding Officer: SHRI R. B. PATLE

Shri Ashok Kumar,
D/67 Vinay Nagar,
Sector-4, Gwalior

...Workman

Versus

Regional Manager,
Bank of India,
Regional Office, Khandwa Region,
BT College, Anand Nagar,
Khandwa ...

...Management

AWARD

Passed on this 21st day of January 2014

1. As per letter dated 21-10-97 by the Government of India, Ministry of Labour, New Delhi, the reference is received.

The reference is made to this Tribunal under Section - 10 of I.D. Act, 1947 as per Notification No. L-12012/236/97-IR (B-II). The dispute under reference relates to:

"Whether the action of the management of Bank of India in terminating the services of Shri Ashok Kumar *w.e.f.* 23.12.95 is legal and justified? If not, to what relief the said workman is entitled?"

2. After receiving reference, Ist Party workman filed his statement of claim at Page 6 to 10. The case of workman is that he was working as Assistant Cashier cum clerk from 7.11.1986 in the Bank. He belong to Schedule Caste, his service record was excellent. His services were terminated from 23.12.95 on the basis of the report of the Enquiry officer. Workman has pleaded that enquiry conducted against him is legal. Principles of natural justice were not followed. The enquiry held against workman is found legal by my learned predecessor as per order dated 10.1.2011. Said order is not set-aside or modified by the Superior Court therefore the contentions of workman about illegality of enquiry are not discussed in details. He was not knowing English. Documents were not supplied. Co-worker was not allowed to participate. Hurdles were created in the Enquiry proceedings. Enquiry was not conducted as per Bipartite Settlement of 1996. The punishment of dismissal is illegal. On such contentions, workman prays for his reinstatement with consequential benefits.

3. IInd Party management filed Written Statement at Page 27 to 31. Relief prayed by workman have been denied. It is not disputed that 1st Party was working as cashier cum clerk from 7.11.1986. His services were terminated from 23.12.95 conducting enquiry as per bipartite settlement. The enquiry was conducted following the rules and principles of natural justice. The dismissal of workman is legal. That chargesheet was issued to workman on 6.4.94. The allegation against him were that the workman had received amount of Rs. 6000/- on 22.7.93 from Mr. Bilore. That workman had admitted that said amount was received by him as credit. He has deposited said amount in account of loan. That workman was given opportunity for his defence. Complainant had denied contents of his complaint. The relevant documents was examined by Handwriting expert. From report of Enquiry Officer, misconduct alleged against workman was proved. The misconduct was of serious nature. The dismissal is proper and legal. Workman filed rejoinder at Page 42 to 49 reiterating his contentions pleaded in his statement of claim. IInd Party filed rejoinder at Page 65 to 74 reiterating its contentions in the Written Statement.

4. As stated above, enquiry conducted against workman is found legal and proper. Said order has received finality and not set-aside by Superior Court, parties were given opportunity to adduce evidence on other issues but no evidence is adduced on other issues by either parties.

5. Considering pleadings and order on preliminary enquiry, points which arise for my consideration and

determination are as under. My findings are recorded against each of them for the reasons as below:

(i) Whether the misconduct Alleged against workman is proved from evidence in Enquiry proceedings?	In Affirmative
(ii) Whether the punishment of dismissal from service imposed on workman is proper and legal?	In Affirmative
(iii) If so, to what relief the workman is entitled to?"	Workman is entitled to relief prayed by him.

REASONS

6. As stated above, enquiry conducted against workman is found legal and proper. The record of Enquiry Proceedings is produced. The careful reading of the documents of enquiry shows that the management examined 4 witnesses and documentary evidence, the delinquent employee examined one witness. The documents examined by handwriting expert shows that the signature on P-9 tallies with the disputed signature. The evidence in Enquiry Proceedings is supporting the charges against workman. The findings of Enquiry Officer cannot be said without evidence. The detailed discussion of evidence in Enquiry Proceedings is not necessary. Ist Party workman has not adduced any evidence on other issues. Enquiry officer has supported report that misconduct against workman is proved. Nothing is brought to my notice how the finding of Enquiry Officer is perverse or illegal. I record my finding in Point No. 1 in Affirmative.

7. That punishment of dismissal from service is imposed on workman on the charges of fraud that amount received from complainant Bilore was not deposited in his account, counterfoil was given to him. The charge is of serious nature. The punishment of dismissal from service cannot be said disproportionate. The punishment of dismissal from service does not call for interference. For above reasons, I record my finding on Point No. 2 in Affirmative.

8. In the result, award is passed as under:—

- (1) Action of the management of Bank of India in terminating the services of Shri Ashok Kumar *w.e.f.* 23.12.95 is proper and legal.
- (2) Workman is not entitled to relief prayed by him.

R.B. PATLE, Presiding Officer

नई दिल्ली, 6 फरवरी, 2014

का०आ० 664.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब नेशनल बैंक प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय भुवनेश्वर के पंचाट (6/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 06/02/2014 को प्राप्त हुआ था।

[सं० एल-12011/30/2010-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 6th February, 2014

S.O. 664.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 6/2011) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Bhubaneswar as shown in the Annexure, in the industrial dispute between the management of Punjab National Bank and their workmen, received by the Central Government on 06/02/2014.

[No. L-12011/30/2010-IR (B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT, BHUBANESWAR

Present: Shri J. Srivastava,
Presiding Officer, C.G.I.T.-cum-Labour
Court, Bhubaneswar.

INDUSTRIAL DISPUTE CASE NO. 06/2011

Date of Passing Award—15th January, 2014

Between:

The Assistant General Manager,
Punjab National Bank, Plot No. 111,
Station Square,
Bhubaneswar-751 001 ...1st Party-Management.

AND

Their workman represented through the
General Secretary, Punjab National Bank,
Shramik Union, C/o. Punjab National Bank,
Bapujinagar, Bhubaneswar-09
(Orissa) ...2nd Party-Union.

APPEARANCES:

Miss Sibani Satpathy, ...	For the 1st Party- Management.
Shri B.K. Sukla, ...	For the 2nd Party- Union
Advisor.	

AWARD

An industrial dispute existing between the employers in relation to the management of Punjab National Bank and their workman has been referred to this Tribunal by the Government of India in the Ministry of Labour in exercise

of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 *vide* its letter No. L-12011/30/2010-IR (B-II), dated 05.01.2011 in respect of the following matter:—

" Whether the action of the management of Punjab National Bank, Bhubaneswar by terminating the services of workman Shri Banamali Nayak, *w.e.f.* 12.11.2009 is legal and/or justified? What relief the workman is entitled to?"

2. The 2nd Party-Union espousing the cause of the workman has filed statement of claim in which it has been stated that Shri Banamali Nayak was employed as sweeper under the 1st Party-Management in its Bhubaneswar Branch for the last several years against regular and permanent vacancy. He has been performing his duties most efficiently and diligently and there was no stigma of any kind reported against him during his service period. He suddenly became ill and went to the Government Ayurvedic Hospital at Bhubaneswar for treatment where he came to know that he has been suffering from acute jaundice. He was advised by the Doctor to go for prolong treatment and take rest with some dietary control. He remained on leave from 8.6.2009 and sent his leave application through his nephew and went to Kalapathar to one of his relative's house and stayed there till he was cured. He sent his leave application indicating his illness from time to time to the 1st Party-Management through his nephew. He was never intimated about the refusal of leave by the Management. After being cured and fit to resume his duties he reported for duty on 11.11.2009 with medical certificate, but he was refused to join duty. He then went to Assistant General Manager on 12.11.2009 and reported for duty with all medical certificates, but he was told to come on the next day. When he again reported for duty on 13.11.2009 he was given termination letter stating therein that the workman has voluntarily abandoned his service with effect from 12.11.2009. The Management has neither followed the principles of natural justice nor the provisions of law envisaged under section 25-F of the Industrial Disputes Act, 1947 before terminating his services. He then put-forth his grievance to the Assistant Labour Commissioner (Central), Bhubaneswar through the Union, but the Management did not cooperate in the conciliation proceedings before the Assistant Labour Commissioner (Central). So the conciliation ended in failure and the matter was referred to the Tribunal by the Government for adjudication. The Management has misconceived and misinterpreted the terms of settlement. The settlement provides that the unauthorised absence of an employee for more than 30 days constitute gross misconduct under Clause 5 (P) of the settlement for which the concerned workman shall face disciplinary proceeding. In Clause-7 of the settlement it has been stipulated that the absence without leave is a minor misconduct and punishment for

minor misconduct has been specified in Clause-8 of the said settlement. No where the settlement provides for termination of service of the workman without giving him reasonable opportunity of being heard. In the instant case absence without leave is a minor misconduct and the workman if proved guilty of such misconduct is liable for punishment as provided in Clause-8 of the settlement. The Management in breach of the principles of natural justice and legal provisions has terminated his service which is illegal, unjustified and void *ab initio* and he is entitled to reinstatement with full back wages.

3. The 1st Party-Management in its written statement has averred that the service conditions of the workmen/employees in the Banking industry are governed by the provisions of Sastri Award, Desai Award and various Bipartite Settlements. Disciplinary action and procedure in respect of the workmen/employees is governed by the Bipartite Settlement dated 10.4.2002. Para-33 of the Bipartite Settlement dated 2.6.2005 which deals with the voluntary cessation of employment states that when an employee absents himself from work for a period of 90 or more consecutive days without prior sanction from the competent authority or beyond the period of leave sanctioned, the Management at any time thereafter may give a notice to the employee at his last known address calling upon him to report for work within 30 days from the date of notice and in case of failure to report for work within 30 days of the notice, a further notice to report for work within 30 days shall be given failing which the employee will be deemed to have voluntarily vacated his employment on the expiry of the said notice. Shri Banamali Nayak while in service of the Bank was in the habit of remaining unaudorizedly absent from the duties of the Bank on various occasions. He did not pay any attention despite advice being given in writing by the Management. He remained absent for 36 days in 1999, for 80 days in 2001, 86 days in 2003 up-to 6.6.2003. He again remained absent from 5.6.2009 without any prior information or permission. In terms of Para-33 of the Bipartite Settlement dated 2.6.2005 he was served with notice dated 5.9.2009. The said notice was received back with a remark of refusal. Thereafter another notice was issued to him through regd. post on 9.8.2009 but Shri Nayak neither sent any reply nor joined the duty within the stipulated time of 30 days. Accordingly he was informed *vide* letter dated 12.11.2009 that he is deemed to have voluntarily vacated his services. His name was struck-off from the banks rolls. Hence the provisions of Section 25-F of the Industrial Disputes Act, 1947 have no application in the present case. Therefore the action of the Management in terminating the services of the workman with effect from 12.11.2009 is legal and justified and he is not entitled to any relief as prayed for.

4. On the pleadings of the parties following issues were framed.

ISSUES

1. Whether the action of the management of Punjab National Bank, Bhubaneswar by terminating the services of workman Shri Banamali Nayak w.e.f. 12.11.2009 is legal and/or justified?

2. What relief the workman is entitled to?

5. The 2nd Party-Union has filed sworn affidavit of Shri Banamali Nayak, the aggrieved workman in evidence. The witness was cross-examined on behalf of the 1st Party-Management. The 2nd Party-Union has also relied on several documents which have been marked as Ext.-I to 14.

6. The 1st Party-Management has declined to adduce any oral evidence, but has filed five documents, which have neither been proved nor exhibited in evidence.

ISSUE NO. 1

7. The case of the 2nd Party-Union is that the aggrieved workman Shri Banamali Nayak was terminated from service by the 1st Party-Management for his long unauthorized absence from duty allegedly due to illness despite putting in several years of service without following the principle of natural justice and the legal mandatory provisions as envisaged under section 25-F of the Industrial Disputes Act. The undisputed facts are that the aggrieved workman remained absent from duty from 8.6.2009 to 10.11.2009. He sent his leave applications from time to time to the 1st Party-Management through his nephew. He reported to the 1st Party-Management on 11.11.2009 on being fit to resume duty, but he was refused to join his duty. Then he went to the Asst. General Manager on 12.11.2009 to report for duty with all medical certificates, but he told him to come on the next day. When he again went to report for duty on 13.11.2009 he was given the termination letter stating that the workman has voluntarily abandoned the service with effect from 12.11.2009. He has alleged that neither the principles of natural justice were followed nor mandatory provisions of law were complied with by the 1st Party-Management before terminating his service.

8. The 1st Party-Management has replied to these allegations in its written statement stating that in accordance with the provisions of Para-33 of the Bipartite Settlement dated 2.6.2005 the workman was terminated from service for his unauthorized absence from duty continuously for a period of 90 days without prior sanction from the competent authority. A notice was given to him on 5.9.2009 with the advice to report for duty within 30 days. The said notice was received back with remarks of refusal. Thereafter another notice was issued on 9.10.2009 stating therein that in case he does not report for duty within thirty days it would be treated that he had voluntarily vacated his service. When Shri Nayak neither sent any reply nor joined duty within the stipulated period of thirty days he was informed *vide* letter dated 12.11.2009 that he has been deemed to have voluntarily vacated his services with effect from 12.11.2009 and his name was struck-off

from the Bank rolls. The aggrieved workman has stated that on getting notice from the Management he reported for duty on 11.11.2009, but he was not allowed to join. Para-522 of the Shastri Award provides that in case of termination of any employee other than by way of disciplinary ground the Management shall give three months pay and allowances in lieu of three months notice simultaneously with the termination order. Neither the Shastri Award nor the settlement or any other law provides for automatic struck-off of name of the employee from the roll of the Bank without giving reasonable opportunity of being heard or without following the mandatory provisions of law.

9. Para-33 of the Memorandum of Settlement dated 2.6.2005 provides for voluntary cessation of employment as stated in the above paragraph, but the Bipartite Settlement dated 10.4.2002 provides for disciplinary action against the workman staff and procedure thereof, wherein it has been provided that the workman found guilty of misconduct whether gross or minor shall not be punished without giving an opportunity of hearing and holding proper enquiry unless the punishment proposed to be given is warning or censure. However it is not clear as to whether the provisions of Para-33 of the bipartite settlement dated 2.6.2005 will over-ride the provisions of the bipartite settlement dated 10.4.2002. However leaving aside the terms of above two settlements it is to be considered what law as has been propounded by the Hon'ble Supreme Court in the case of D.K. Yadav -versus- J.M.A Industries Limited in C.A. No. 166 (NL) of 1993 (relied on by the 2nd Party-workman) and "Syndicate Bank -Versus- The General Secretary, Syndicate Bank Staff Association and Another" in C.A. No. 4263/1999 relied on by the 1st Party-Management relating to matters of termination of service of an employee.

10. In the case of "Syndicate Bank -versus- General Secretary, Syndicate Bank Staff Association and Another" relied on by the 1st Party-Management the Hon'ble Supreme Court has held on the facts of the case that the action taken by the Bank under Clause 16 of the Bipartite Settlement was justified because the appellant absented himself from work for a period of 90 or more consecutive days and he had no intention of joining duties. He did not join the duties after giving notice as he had no intention for joining duties. On expiry of notice period the Bank passed orders that the appellant had voluntarily retired from service. Undue reliance on the principles of natural justice by the Tribunal and High Court was pressed and led miscarriage of justice to the Bank. The conduct of appellant as an employee of the Bank had been astounding and therefore termination was justified. However the court observed that enquiry would have been necessary, if Dayananda (employee) had submitted his explanation which was not acceptable to the Bank or contended that he did report for duty but was not allowed to join by the Bank. Nothing of the like has happened here.

11. In the other case "D.K. Yadav -versus- J.M.A Industries Limited" relied on by the 2nd Party-workman the Hon'ble Supreme Court in its full bench decision has held that "right to life enshrined under Article 21 of the Constitution would include right to livelihood. The order of termination of the service of an employee/workman visits with civil consequences of jeopardising not only his/her livelihood but also career and livelihood of dependants. Therefore before taking any action putting an end to the tenure of employee/workman fair play requires that a reasonable opportunity to put forth his case is given and domestic enquiry conducted complying with the principles of natural justice.

12. The principles of natural justice must be read into the Standing Order No. 13(2)(iv) (which provides for automatic loss of lien). Otherwise it would become arbitrary, unjust and unfair violating Article 14. When so read the impugned action is violative of the principles of natural justice.

13. The Hon'ble Court has further held that "cardinal point that has to be borne in mind, in every case, is whether the person concerned should have a reasonable opportunity of presenting his case and the authority should act fairly, justly, reasonably and impartially. It is not so much to act judicially but is to act fairly, namely, the procedure adopted must be just, fair and reasonable in the particular circumstances of the case. In other words application of the principles of natural justice that no man should be condemned unheard intends to prevent the authority to act arbitrarily effecting the rights of the concerned person.

14. In the case in hand the aggrieved workman has clearly stated that due to illness he could not attend his duties from 8.6.2009 to 10.11.2009. He sent his leave applications to the 1st Party-Management from time to time through his nephew. Although he has filed copies of the medical certificate Ext.-4, representation dated 22.11.2009 Ext.-6 and other papers to plead his case of illness, but they do not seem to have been considered by the 1st Party-Management. The aggrieved workman has categorically stated that he reported for duty on 11.11.2009, but he was not allowed to join the duty. He then went to the Assistant General Manager to report for duty on 12.11.2009. He was asked to come on next day. On 13.11.2009 when he again reported for duty he was handed over the termination letter stating voluntarily abandonment of services by him with effect from 12.11.2009. Thus it is apparent that he was not given any opportunity for hearing nor his case was duly considered by the 1st Party-Management. No domestic enquiry was made in respect of his unauthorized absence from duty for the period of his continuous absence. Thus the principles of law laid-down in "D.K. Yadav -versus- M/s. J.M.A. Industries Limited" by the full court bench of the Hon'ble Supreme Court are fully applicable in the present case. The ruling in the case of "Syndicate Bank -

Versus- General Secretary, Syndicate Bank Staff Association and another" has also given the dictum that "the employer should follow the principles of natural justice before termination". Therefore the action of the Management of Punjab National Bank, Bhubaneswar in terminating the services of Shri Banamali Nayak with effect from 12.11.2009 cannot be held legal and justified. This issue is decided against the 1st Party-Management in the negative.

ISSUE NO. 2

15. Since the termination of the workman Shri Banamali Nayak has been held illegal and unjustified under Issue No. 1 the workman is entitled to reinstatement in service with full back wages from 12.11.2009.

16. The reference is answered accordingly.

J. SRIVASTAVA, Presiding Officer

नई दिल्ली, 6 फरवरी, 2014

कांआ० 665.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय-1, नई दिल्ली के पंचाट (संदर्भ संख्या 108/2013) में प्रकाशित करती है जो केन्द्रीय सरकार को 06.02.2014 को प्राप्त हुआ था।

[सं० एल-12012/74/97-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 6th February, 2014

S.O. 665.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.No. 108/2013) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 1, New Delhi as shown in the Annexure, in the industrial dispute between the management of Punjab National Bank and their workmen, received by the Central Government on 06/02/2014.

[No. L-12012/74/97 - IR(B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

**BEFORE DR. R.K. YADAV, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
NO. 1, KARKARDOOMA COURTS COMPLEX, DELHI**

I.D. No. 108/2013

Smt. Sneha Agarwal,

Plot No. 43, Flat No. S-25,

Sector-9, Venus Apartments,

Rohini, Delhi-110085.

... Workman

Versus

The Chairman & Managing Director,

Punjab National Bank,

No.7, Bhikaji Cama Place,

New Delhi-110066.

... Management

AWARD

An Advanced Level Punching Machine Operator (in short ALPM Operator), while working at Parliament Street, New Delhi branch of Punjab National Bank (in short the bank) was approached by Shri P. S. Bedi, then Manager, Kallirampur, Meerut branch of the bank for some deposits, since the later had to meet his targets. She allegedly paid a sum of Rs. 50,000.00 on 15.11.1990 and another sum of Rs. 10,000.00 on 21.11.1990 to Shri Bedi. An FDR bearing No. 20 of 1991 dated 02.02.1991 for Rs. 60,000.00 was handed over to the said APLM Operator by Shri Bedi. On 04.02.1991, she applied for demand loan of Rs. 60,000.00 by pledging the said FDR with the bank. Loan of Rs. 60,000.00 was sanctioned in her favour. Later on, it was detected by the bank that though the FDR purported to have been issued for a sum of Rs. 60,000 on 02.02.1991, yet only a sum of Rs. 6,000.00 was deposited with the bank on 03.02.1991 and the amount was inflated on the aforesaid FDR, in conspiracy with the claimant. On coming to know that the fraud has been detected, the ALPM Operator refunded the loan amount by way of deposit of a sum of Rs. 66,500.00 with the bank on 28.01.1992.

2. A criminal case was lodged with the Central Bureau of Investigation (in short CBI) in respect of fraud committed at Kallirampur, Meerut branch, of the bank. CBI took up the investigation. Bipartite Settlements and Vigilance circulars of the bank provide that when investigation in a matter is conducted by the police, the bank is required to keep disciplinary action in abeyance. Following those guidelines no disciplinary action was initiated against the ALPM Operator immediately when fraud came to light. When CBI advised the bank to proceed with the disciplinary action, charge sheet dated 07.02.1994 was served on the ALPM Operator, namely, Smt. Sneha Aggarwal. A domestic enquiry was constituted, when her reply was found not to be satisfactory. After giving an opportunity of being heard, the Enquiry Officer recorded findings against the claimant. He submitted his report to the bank. The Disciplinary Authority concurred with the findings of the Enquiry Officer and gave an opportunity to the claimant to show cause as to why punishment of dismissal should not be awarded to her. After hearing the claimant, the Disciplinary Authority awarded punishment of dismissal from service, *vide* his order dated 08/11.08.1995. Appeal preferred by the claimant came to be dismissed. She approached the Conciliation Officer, raising an industrial dispute before him. Since the bank contested her case, conciliation proceedings ended into a failure. On consideration of failure report submitted by the Conciliation Officer, the appropriate Government referred the dispute to this Tribunal for adjudication, *vide* order No.L-12012/74/97/IR(B-II), New Delhi dated 30.09.1997, with following terms:

"Whether action of management of Punjab National Bank in dismissing services of Ms. Snehlata Aggarwal, Clerk/Cashier with effect from 11.08.1995

is just and fair? If not to what relief the workman is entitled?"

3. The appropriate Government issued corrigendum *vide* order No. L-12012/74/97-IR(B-II), New Delhi dated 23.02.1998 and ordered that the name of the claimant may be read as 'Sneh Aggarwal' instead of 'Snehlata Aggarwal'.

4. Claim statement was filed by Ms. Sneha Aggarwal pleading therein that she was appointed as clerk by the bank on 15.09.1973. She rendered continuous service for a spell of 13 years, which remained unblemished, untarnished and without any stigma. While posted at Parliament Street branch of the bank, she was placed under suspension *vide* letter dated 30.01.1992 wherein neither foundation nor grounds of suspension were mentioned. In order to fill in the gaps, another suspension order was issued on 31.01.1992 wherein it was mentioned that she has been suspended in connection with alleged inflation of FDR No. 20 of 1991, Account No.238 opened at Kallirampur, Meerut branch, of the bank. Charge sheet was served on her on 07.02.1994, wherein it was alleged that she misused her position as a staff member and committed fraud, which act is prejudicial to the interest of the bank and a misconduct in terms of para 19.5(j) of the Bipartite Settlement dated 10.04.1992. Since the charges were denied by her, a domestic enquiry was constituted on 30.06.1994 appointing Shri RMC Vaish, Senior Manager as Enquiry Officer. *Vide* order dated 27.01.1994, he was replaced by Shri D.D. Sharma as Enquiry Officer, who was Senior Manager (Personnel), without assigning any reasons for the change. He was under direct control of the Disciplinary Authority. He had not acted impartially but in fact had given in to whims and fancies of the Disciplinary Authority. She was not allowed to be defended by a Defence Representative, when her earlier Defence Representative left midway.

5. The claimant, prior to her posting at Parliament Street, was working under the overall charge of Shri P.S. Bedi at Tilak Nagar branch of the bank, who was later on transferred to Kallirampur branch of the bank, as an Incumbent Incharge. She was approached by Shri Bedi requesting her for some deposit so as to enable him to achieve his target. She had given Rs. 50,000.00 and Rs. 10,000.00 on 15.11.1990 and 21.11.1990 respectively, alongwith on application form, for issuance of an FDR. The FDR bearing No. 20/91 dated 02.02.1991 was handed over to her. Since she was in need of money, she applied for Demand Loan at Parliament Street branch of the bank. Later on, it transpired that the FDR was issued for Rs. 6000.00 instead of Rs. 60,000.00, hence she immediately adjusted the demand loan on 28.01.1992. On 29.01.1992, she was called by the Chief Manager, Parliament Street branch of the bank in his chamber. Where other Officers were also sitting. He burst out saying that she had committed a fraud by inflating FDR of Rs. 6000.00 on to Rs. 60000.00 and threatened her with dire consequences of her dismissal from service and arrest by police. A confessional statement was obtained under duress. As per

regular practice, the FDR was prepared by Shri P.S. Bedi and signed by Shri Pradeep Kumar Aggarwal. If the FDR, in original, is produced, it would prove that the FDR was prepared for Rs. 60,000.00, with no erasing, overwriting or cutting or any sort. Further, the FDR is dated 02.02.1991 and no entries occur in the books of the bank to the effect that this amount was deposited. A sum of Rs. 6000 was deposited only on 04.02.1991. How was it possible that two officials have signed the FDR without formalities being completed. Materially important documents were not made available to her during the enquiry and only two out of three witnesses were examined by the bank. Shri P.S. Bedi, the witness examined by the claimant in defence, admitted his guilt of having embezzled the amount. The findings of the Enquiry Officer are malafide, arbitrary, vindictive, based on conjunctures, surmises, hearsay evidence and against the principles of natural justice. None of the documents relied by the bank proves any conspiracy on her part. Rather, it was Shri P.S. Bedi who took cash of Rs. 60,000.00 and accounted for Rs. 6000.00 in books of the bank.

6. In her submissions on the findings of the enquiry, she protested against the attitude of the Enquiry Officer, who during course of enquiry never allowed her to speak, stating that the charges are not being proved against her. It was told time and again that she had on hand at all in the fraud. How could she, who was not working at Kallirampur branch of the bank, have a hand in the fraud. It was Shri Pradeep Kumar Aggarwal and Shri P.S. Bedi who were masterminds. 29 FDRs were prepared in the names of Shri P.S. Bedi's sons and a few others. She was trapped and defrauded by Shri Bedi. Show cause notice was served on her, proposing punishment of dismissal from service. The order passed by the Disciplinary Authority is unreasoned, non-speaking, without application of mind, and passed in mechanical, stereotyped and illegal manner. Appeal preferred by the claimant also came to be dismissed. She prays that the Enquiry report and the impugned order of dismissal from service may be quashed, besides a command to the bank to reinstate her in service with all consequential benefits of seniority and promotions.

7. Claim was demurred by the bank pleading that the claimant was charge sheeted on 07.02.1994 by the Disciplinary Authority for her alleged acts of entering into a conspiracy with Shri P.S. Bedi the then Manager at Kallirampur Branch of the bank for prepared an FDR No. 20 of 91 for Rs. 6000.00, which was later on inflated to Rs. 60,000.00 with ulterior motive. Subsequently, against this inflated FDR, she availed a demand loan on 04.02.1991. Out of the overdraft of Rs. 60,000.00, she utilized a sum of Rs. 35,933.10 towards adjustment of another demand loan account No.73/25 and an amount of Rs. 1000.00 in her demand loan account No.74/25 on 04.02.1991 itself. As reply submitted by the claimant was found to be not satisfactory, a domestic enquiry was constituted. She was afforded all opportunity to present her case. It was denied

that the claimant was harassed or victimized, since she was a female staff. Subsistence allowance was paid to her as per rules. Charge sheet dated 07.02.1994 was send on the claimant in consonance with para 19.4 of the Bipartite Settlement as well as vigilance circulars, which contemplate that till on investigation is concluded by the CBI authorises, the bank is required to keep disciplinary action in abeyance. All necessary and relevant documents were suppllied to the claimant during the course of enquiry. She was allowed inspection of the relevant documents Further counterfoil, vouchers, cash long book. FD long book etc. were all shown is the claimant Assistance of Defence Assistant was allowed to the claimant Shri K. R. Nagpal, the defence representative, withdrew himself from the enquiry proceedings on 14.02.1995 without assigning any reasons. At no point of time, the bank prevented her from being assisted by a Defence Representative, after earlier Defence Representative withdrew from the enquiry. The claimant made a statement on the said date that she does not want to lead to any further evidence but would like to make a statement for which she requested time. Her request was acceded to. The enquiry was conducted in Hindi on the next date and the claimant made a detailed statement.

8. Adverse conclusion cannot be drawn merely because one of the witnesses was not produced before the Enquiry Officer. It is the prerogative of the Presenting Officer to decide on the issue of production of witnesses. The Enquiry Officer submitted his report after taking into account entire material on record, including contentions, pleas and submissions made by the claimant. The Enquiry Officer acted impartially and conducted the proceedings in accordance with provisions of the Bipartite Settlements. The Disciplinary Authority, after considering the entire material on record as well as submissions made by the claimant, proposed punishment of dismissal *vide* show cause dated 01.07.1995, and granted her a personal hearing. The said punishment was confirmed *vide* order dated 08/11.03.1995. Thereafter, the appeal preferred by her also came to be dismissed. It is denied that the orders passed by the Disciplinary Authority and the Appellate Authority are unreasoned, non-speaking, without application of mind, mechanical and illegal. It has been claimed that the claim statement may be dismissed.

9. On perusal of pleadings, following issues were settled by my learned predecessor:

- (i) Whether the domestic enquiry conducted against the workman is fair and proper?
- (ii) As in terms of reference.

10. To discharge onus resting on the bank, Shri P.C. Jain, Senior Manager was examined. Claimant entered the witness box to testify fact in support of her claim. No other witness was examined by either of the parties.

11. *Vide* order No. Z-22019/6/2007-IR(C-II), New Delhi dated 11.02.2008, the case was transferred to Central Government Industrial Tribunal No 2, New Delhi, for adjudication by the appropriate Government.

12. On hearing the parties, an award was passed by the Central Government Industrial Tribunal No. 2, New Delhi, on 10.08.2011, wherein it was concluded that the enquiry conducted by the bank was not just, fair and proper. The Tribunal announced that action of the bank in dismissing the claimant was neither just nor fair. The Tribunal ordered reinstatement of the claimant in service with continuity and all consequential benefits.

13. The bank assailed the award before the High Court of Delhi by way of writ petition No.9083 of 2011. The writ petition was granted by the High Court *vide* its order dated 17.04.2013 on the strength of which the impugned award was set aside. The case was remitted back to the Tribunal to grant opportunity to the bank to lead its evidence with a right to the claimant to rebut it, besides to make their submissions on the aspect of establishment of the charge against the claimant. The Tribunal was commended to pass a fresh award on the basis of further evidence that it would record, without being influenced by observations made in the impugned award.

14. *Vide* notification No. A-11016/3/2009-CLS-II, New Delhi dated 03.04.2013, additional charge of the post of the Presiding Officer, Central Government Industrial Tribunal No. II, New Delhi, was assigned to the undersigned by the appropriate Government and thus the case reached this Tribunal for adjudication.

15. Pursuant to order dated 17.04.2013 passed by the High Court of Delhi, the bank was called upon to adduce its evidence to prove misconduct of the claimant. Ms. Rimi Ray, Manager (HR) and Shri Pradeep Kumar Aggarwal were examined by the bank to prove misconduct of the claimant. Their cross examination was also recorded, which remained incomplete. For their further cross examination, matter was adjourned to 15.07.2013. In between, the Presiding Officer, Central Government Industrial Tribunal No.2, New Delhi, had taken over charge. The case was sent to his board for adjudication.

16. *Vide* order No. L-12012/74/1997-IR(B-II), New Delhi dated 26.07.2013, case was transferred to this Tribunal for adjudication by the appropriate Government.

17. Ms. Rimi Ray and Shri Pradeep Kumar Aggarwal entered the witness box again to face rigours of cross examination. On conclusion of their depositions, the bank opted not to examine any other witness. Claimant again entered the witness box to rebut depositions of Ms. Rimi Ray and Shri Pradeep Kumar Aggarwal. She also opted not to examine any other witness in rebuttal.

18. Arguments were heard at the bar. Shri Bharat Gupta, authorized representative, advanced arguments on behalf of the claimant. Shri Rajat Arora, authorized representative, assisted by Ms. Rimi Ray, Manager (HR) made submissions

on behalf of the bank. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows.

Issue No. 1.

19. Four standards were delineated by the Labour Appellate Tribunal in Buckingham & Carnatic Company Limited (1952 LAC. 490) to render managerial right of taking disciplinary action vulnerable, namely, (i) where there is a want of bonafides or (ii) when it is a case of victimization or unfair labour practice or violation of the principles of natural justice, or (iii) when there is basic error of facts, or (iv) when there has been a perverse finding on the materials. This articulation was adopted by the Apex Court with slight modification in Indian Iron and Steel Company Limited [1958(1) LLJ 260]. without any acknowledgement to the precedent in Buckingham & Carnatic case (*supra*), wherein it was ruled that the power of the management to direct its own internal administration and discipline was not unlimited and liable to be interfered with by industrial adjudication when a dispute arises to see whether termination of services of a workman is justified and to give appropriate relief. However, it was announced that the jurisdiction of an Industrial Tribunal to interfere with the managerial prerogative of taking disciplinary action is not of appellate nature as the legislature has not chosen to confer such jurisdiction upon it. Hence Tribunal could not substitute its own judgement for that of the management. The Court laid down that in the following circumstances an industrial adjudicator can interfere with the disciplinary action taken by the employer: (1) when there is want of good faith, (2) when there was victimization or unfair labour practice, (3) when the management had been guilty of a basic error or violation of the principles of natural justice, or (4) when on the materials, the finding was completely baseless or perverse.

20. Enunciation (1) and (2), referred above, are addressed to the bona fides of the employer in initiating the action and inflicting the punishment, while postulates (3) and (4) are addressed to domestic enquiry. Therefore, an employer is required to act bona-fide in initiating disciplinary action as well as in inflicting the punishment. In initiating the action, the alleged act of misconduct should not be a ruse for something else, such as the trade union activities of the workman or employers dislike of him for some personal reasons. The action should not be motivated by vindictiveness or ulterior purpose, so as to smack for victimization or unfair labour practice. Likewise in the matter of inflicting punishment, the employer should act fairly. In case punishment awarded is so shockingly disproportionate to the act of the misconduct, as no reasonable man would ever impose that itself may lead to an inference of malafides, victimization or unfair labour practice. In holding enquiry, the Enquiry Officer must comply with the rules of natural justice. He must not be a biased person and give reasonable opportunity to both sides for being heard. His findings should not be baseless or perverse.

21. In *Ramswarth Sinha* (1954 L.A.C. 697) the Labour Appellate Tribunal recognized the right of the management to ask for permission to adduce evidence before the Tribunal to justify its action in a "no enquiry" case. Following that proposition the Apex Court equated the cases of "defective enquiry" with "no enquiry" cases and ruled that in either cases, the Tribunal have jurisdiction to go into the merits of the case on the basis of evidence adduced before it by the parties. Reference can be made to the precedent in *Motipur Sugar Factory Pvt. Ltd.* [1965(2) LLJ 162] where the employer had held no enquiry at all before the dismissal and therefore, adduced evidence to justify its action before the Tribunal, which decision was upheld. The Apex Court discarded the plea on behalf of the workman that since no enquiry at all had been held by the employer, it had no right to adduce evidence to justify its stand before the Tribunal. In *Ritz Theatre* [1962 (II) LLJ 498] it was ruled by the Supreme Court that the Tribunal would be justified to go to the merits of the case and decide for itself on the basis of the evidence adduced whether the charges have indeed been made out. It announced that it would neither be fair to the management nor fair to the workman himself in such a case that the Tribunal should refuse to take the evidence and thereby drive the management to pass through the whole process of holding the enquiry all over again. Reference can also be made to the precedent in *Bharat Sugar Mills Ltd.* [1961 (11) LLJ 644]

22. In *Delhi Cloth and General Mills Company* [1972 (1) LLJ 180], Apex Court considered the catena of decisions over the subject and laid down the following principles:

"(1) If no domestic enquiry had been held by the management, or if the management makes it clear that it does not rely upon any domestic enquiry that may have been held by it, it is entitled to straightaway adduce evidence before the Tribunal justifying its action. The Tribunal is bound to consider that evidence so adduced before it, on merits, and give a decision thereon. In such a case, it is not necessary for the Tribunal to consider the validity of the domestic enquiry as the employer himself does not rely on it.

(2) If a domestic enquiry had been held, it is open to the management to rely upon the domestic enquiry held by it, in the first instance, and alternatively and without prejudice to its plea that the enquiry is proper and binding, simultaneously adduce additional evidence before the Tribunal justifying its action. In such a case no inference can be drawn, without anything more, that the management has given up the enquiry conducted by it.

(3) When the management relies on the enquiry conducted by it, and also simultaneously adduces evidence before the Tribunal, without prejudice to its plea that the enquiry proceedings are proper, it is the duty of the Tribunal, in the first instance, to

consider whether the enquiry proceedings conducted by the management, are valid and proper. If the Tribunal is satisfied that the enquiry proceedings have been held properly and are valid, the question of considering the evidence adduced before it on merits, no longer survives. It is only when the holds that the enquiry proceedings have not been properly held, that it derives jurisdiction to deal with the merits of the dispute and in such a case it has to consider the evidence adduced before it by the management and decide the matter on the basis of such evidence.

(4) When the domestic enquiry has been held by the management and the management relies on the same, it is open to the latter to request the Tribunal to try the validity of the domestic enquiry as a preliminary issue and also ask for an opportunity to adduce evidence before the Tribunal, if the finding on the preliminary issue is against The management. However, elaborate and cumbersome the procedure may be, under such circumstances, it is open to the Tribunal to deal, in the first instance, as a preliminary issue the validity of the domestic enquiry. If its finding on the preliminary issue is in favour of the management, then no additional evidence need be cited by the management. But, if the finding on the preliminary issue is against the management, the Tribunal will have to give the employer an opportunity to cite additional evidence and also give a similar opportunity to the employee to lead evidence contra, as the request to adduce evidence had been made by the management to the Tribunal during the course of the proceedings and before the trial has come to an end. When the preliminary issue is decided against the management and the latter leads evidence before the Tribunal, the position, under such circumstances, will be, that the management is deprived of the benefit of having the finding of the domestic tribunal being accepted as prima facie proof of the alleged misconduct. On the other hand, the management will have to prove, by adducing proper evidence, that the workman is guilty of misconduct and that the action taken by it is proper. It will not be just and fair either to the management or to the workman that the Tribunal should refuse to take evidence and thereby ask the management to take a further application, after holding a proper enquiry, and deprive the workman of the benefit of the Tribunal itself being satisfied, on evidence adduced before it, that he was or was not guilty of the alleged misconduct.

(5) The management has got a right to attempt to sustain its order by adducing independent evidence before the Tribunal. But the management should avail itself of the said opportunity by making a suitable

request to the Tribunal before the proceedings are closed. If no such opportunity has been available of, or asked for by the management, before the proceedings are closed, the employer can make no grievance that the Tribunal did not provide such an opportunity. The Tribunal will have before it only the enquiry proceedings and it has to decide whether the proceedings have been held properly and the findings recorded therein are also proper.

(6) If the employer relies only on the domestic enquiry and does not simultaneously lead additional evidence or ask for an opportunity during the pendency of the proceedings to adduce such evidence, the duty of the Tribunal is only to consider the validity of the domestic enquiry as well as the finding recorded therein and decide the matter. If the Tribunal decides that the domestic enquiry has not been held properly, it is not its function to invite *suo moto* the employer to adduce evidence before it to justify the action taken by it.

(7) The above principles apply to the proceedings before the Tribunal, which have come before it either on a reference under Section 10 or by way of an application under Section 33 of the Industrial Disputes Act, 1947.

23. Keeping in view the proposition laid by the Apex Court in Delhi Cloth and General Mills Company (supra), the Parliament inserted section 11-A in the Industrial Disputes Act, 1947 (in short the Act), which came into force *w.e.f.* 15th of December 1971. In the statement of objects and reasons for inserting section 11-A, it was stated:

"In Indian Iron and Steel Company Limited and Another Vs. Their Workmen (AIR 1958 S.C. 130 at p.138), the Supreme Court, while considering the Tribunal's power to interfere with the management's decision to dismiss, discharge or terminate the services of a workman, has observed that in case of dismissal on misconduct, the Tribunal does not act as a court of appeal and substitute its own judgment for that of the management and that the Tribunal will interfere only when there is want of good faith, victimization, unfair labour practice, etc., on the part of the management.

2. The International Labour Organisation, in its recommendation (No. 119) concerning 'Termination of employment at the initiative of the employer' adopted in June 1963, has recommended that a worker aggrieved by the termination of his employment should be entitled to appeal against the termination among others, to a neutral body such as an arbitrator, a court, an arbitration committee or a similar body and that the neutral body concerned should be empowered to examine the reasons given in the termination of employment and the other

circumstances relating to the case and to render a decision on the justification of the termination. The International Labour Organisation has further recommended that the neutral body should be empowered (if it finds that the termination of employment was unjustified) to order that the worker concerned, unless reinstated with unpaid wages, should be paid adequate compensation or afforded some other relief.

3. In accordance with these recommendations, it is considered that the Tribunal's power in an adjudication proceeding relating to discharge or dismissal of a workman should not be limited and that the Tribunal should have the power, in cases wherever necessary to set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit or give such other reliefs to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require. For this purpose, a new Section 11-A is proposed to be inserted in the Industrial Disputes Act, 1947....".

24. After insertion of section 11-A, the Apex Court summed up the law in the case of Firestone Tyre and Rubber Company [1973 (1) LLJ 278] in the following propositions:

"(1) The right to take disciplinary action and to decide upon the quantum of punishment are mainly managerial functions, but if a dispute is referred to a Tribunal, the latter has power to see if action of the employer is justified.

(2) Before imposing the punishment, as employer is expected to conduct a proper enquiry in accordance with the provisions of the Standing Orders, if applicable, and principles of natural justice. The enquiry should not be an empty formality.

(3) When a proper enquiry has been held by an employer, and the finding of misconduct is a plausible conclusion flowing from the evidence, adduced at the said enquiry, the Tribunal has no jurisdiction to sit in judgement over the decision of the employer as an appellate body. The interference with the decision of the employer will be justified only when the findings arrived at in the enquiry are perverse or the management is guilty of victimization, unfair labour practice or *malafide*.

(4) Even if no enquiry has been held by an employer or if the enquiry held by him is found to be defective, the Tribunal in order to satisfy itself about the legality and validity of the order, had to give an opportunity to the employer and employee to adduce evidence before it. It is open to the employer to adduce evidence for the first time justifying his action, and it is open to the employee to adduce evidence contra.

(5) The effect of an employer not holding an enquiry is that the Tribunal would not have to consider only whether there was a *prima facie* case. On the other hand, the issue about the merits of the impugned order of dismissal or discharge is at large before the Tribunal and the latter, on the evidence adduced before it, has to decide for itself whether the misconduct alleged is proved. In such cases, the point about the exercise of managerial functions does not arise at all. A case of defective enquiry stands on the same footing as no enquiry.

(6) The Tribunal gets jurisdiction to consider the evidence placed before it for the first time; in justification of the action taken only, if no enquiry has been held or after the enquiry conducted by an employer is found to be defective.

(7) It has never been recognized that the Tribunal should straightaway, without anything more, direct reinstatement of a dismissed or discharged employee, once it is found that no domestic enquiry has been held or the said enquiry is found to be defective.

(8) An employer, who wants to avail himself of the opportunity of adducing evidence for the first time before the Tribunal to justify his action, should ask for it at the appropriate stage. If such an opportunity is asked for, the Tribunal has no power to refuse. The giving of an opportunity to an employer to adduce evidence for the first time before the Tribunal is in the interest of both the management and the employee and to enable the Tribunal itself to be satisfied about the alleged misconduct.

(9) Once the misconduct is proved either in the enquiry conducted by an employer or by the evidence placed before a Tribunal for the first time, punishment imposed cannot, be interfered with by the Tribunal except in cases where the punishment is so harsh as to suggest victimization.

(10) In a particular case, after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in *The Management of Panitole Tea Estate Vs. The workmen*, within the judicial decision of a Labour Court or Tribunal.."

25. In *Mahatta* [2012(133) FLR 413], the High Court of Delhi dealt with a series of decision on the topic and ruled that an industrial adjudicator, upon completion of pleadings, is required to proceed with the adjudication in the following manner:

- (a) To examine whether the domestic enquiry preceding the punishment is pleaded to have been held and documents in support thereof filed.
- (b) If the domestic enquiry is pleaded and the documents in support thereof filed, and the workman has challenged the validity of the said domestic enquiry, to determine whether such challenge is on any factual or purely legal grounds and frame issues on the same.

(c) However, if domestic enquiry is not pleaded or if pleaded but no documents in support thereof filed, the question of framing any issue as to domestic enquiry does not arise.

(d) If an issue as aforesaid to the domestic inquiry has been framed and the employee has also sought opportunity to in the alternative establish misconduct before the Industrial Adjudicator, to frame issue thereon also, simultaneously with framing issues on validity of inquiry.

(e) To, after hearing the parties consider whether in the facts of the present case any prejudice (other than as above) is likely to be caused to either of the parties if evidence on both sets of issues is led together. Only on finding, by a reasoned order, a case of such prejudice or any other reason, is the trial to be bifurcated into two states. Else, the parties to be directed to lead evidence on both sets of issues together.

(f) To, if the evidence on both sets of issues has been recorded together, to first consider the evidence only on the aspect of validity of the inquiry and without being influenced in any manner whatsoever by the depositions of the witnesses on the merits of the dispute, *i.e.* misconduct with which the workman was charged with, if the enquiry is found to be vitiated and a finding in that regard is returned, the Industrial Adjudicator may then proceed to adjudicate on the basis of evidence in that respect, whether misconduct has been established or not.

(g) The Industrial Adjudicator to, on case to case basis, decide whether the arguments on both aspects are to be heard together or at different stages. However, as aforesaid an endeavour is to be made to record the evidence of the witness on both issues in one go only.

26. In view of the law laid above, it is evident that at the stage of adjudication for virus of the enquiry, the Tribunal is not supposed to look into the evidence adduced by the bank on merits of the case. In case domestic enquiry would be held to be not in consonance with principles of natural justice, evidence adduced on merits of the case would be looked into in order to adjudicate as to whether the misconduct has been established or not. Therefore, now I would proceed to examine the evidence adduced by the parties on virus of the enquiry.

27. In a domestic enquiry, the Enquiry Officer is under an obligation to conduct the proceedings in accordance with requirements of statutory provisions or rules. In private sector, the procedure for holding of an enquiry is laid down by standing order framed under the Industrial Employment (Standing Orders) Act, 1946. which standing orders have force of law. Even where no procedure for enquiry has

been laid down, the employer is to follow a reasonable procedure for according an opportunity to the employee to defend himself in the matter. Since the object of departmental enquiry is to find out whether punishment should not be imposed against an employee, the principles of natural justice are applicable to departmental enquiries, even though there may be no rule or statutory provisions government the procedure of departmental enquiry before such authority. The principles of natural justice are those rules which have been laid down by the courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial or quasi judicial authority, while making an order affecting those rights. These principles are well settled and described thus:

- i. That every person whose civil rights are affected must have a reasonable notice of the case he has to meet.
- ii. That he must have reasonable opportunity of being heard in his defence.
- iii. That the hearing must be by an impartial tribunal, that is, a person who is neither directly nor indirectly a party to the case.
- iv. That the authority must act in good faith, and not arbitrary but reasonably.

28. To show that the domestic enquiry stood vitiated the workman may highlight the following propositions.

- (i) The enquiry is defective on account of violations of principles of natural justice.
 - (a) The employee was not informed of the charge against him.
 - (b) No evidence was taken in support of the charges.
 - (c) The witnesses in support of the charges, have not been examined in the presence of the employee.
 - (d) The employee was not given a fair opportunity to cross examine the witnesses examined by the management.
 - (e) The employee was not given a fair opportunity to examine witnesses including himself in his defence, if he so wishes, on any relevant matter,
 - (f) The enquiry officer has not written a report, giving his findings with reasons.
 - (g) The dismissal is founded on a ground which was not included in the charge sheet served upon him in respect of which the enquiry was held.
 - (h) The dismissal is founded on the interrogation of the workmen, without examining any witnesses in support of the charges.

- (ii) The enquiry was not held in accordance with the relevant standing order of the establishment.

29. Whether the bank has been able to follow settled principles to conduct enquiry against the claimant? For an answer to this proposition, facts testified by Shri P.C. Jain, Manager and the claimant, besides material placed over the record, are to be scanned. Shri Jain unfolds in his affidavit Ex. MW1/1 that on the first date of enquiry, charge was read over to the employee, who denied all those allegations. List of documents and witnesses, relied by the bank to substantiate the charges, were supplied. Original documents were allowed to be inspected at Kallirampur branch. Original of FDR No. 20/91 (A/c No. 238) for an amount of Rs. 60,000.00 and copy of AOF dated 04.02.1991 alongwith promissory note submitted by the claimant for demand loan were not produced since the same were seized by the CBI. Seizure memo and certified copies were produced for inspection. Claimant, in conspiracy with Shri P.S. Bedi, got prepared FDR No. 20 of 91 for a sum of Rs. 6000.00 from Kallirampur branch and inflated the amount to Rs. 60,000.00 with ulterior motive. Thereafter she raised a demand loan of Rs. 60,000.00 at Parliament Street branch of the bank on the inflated FDR, During the course of cross examination, he denied the fact that the defence assistant was not available to the claimant throughout the enquiry. He also denied the suggestion that opportunity for adducing evidence was not given to her. He further denied that the enquiry was not fair and proper, since full opportunity was not given to her to defend herself.

30. Claimant details in her affidavit Ex. WW1/1, tendered as evidence, that she had no role to play in functioning of Kallirampur branch of the bank where FDR was prepared. She details that enquiry was conducted in illegal manner. Enquiry Officer, Shri RMC Vaish, appointed on 30.06.1994, was illegally changed on 27.10.1994. The Enquiry Report is perverse since it is not based on any evidence. The Enquiry Officer had not taken into consideration the confessional statement made by Shri P.S. Bedi Original FDR, alleged to have been inflated, was not produced before the Enquiry Officer She was left in lurch when her defence assistant withdrew himself under influence of the bank. Additional documents demanded were not supplied to her. Smt. Sudesh Malhotra, custodian of FDR at Parliament Street branch of the bank, was not examined. The Enquiry Officer acted partially. He recorded findings "the lady staff member had intimacy with Shri Bedi", which was beyond the scope of enquiry. She claims that dismissal order was *malafide*. Shri P.S. Bedi and Shri P.K. Aggarwal were not proceeded against departmentally, for reasons best known to the bank. Her alleged confessional statement, obtained under duress on 29.01.2002. was used. She projects that it was Shri Bedi and Shri Aggarwal who played the entire drama. There was no inflation in the amount of FDR. Otherwise, the bank would not have granted her demand loan. CBI had not filed any report against her.

31. Besides the above facts, enquiry proceedings were filed before the Tribunal. During the course of arguments, the claimant does not dispute that enquiry proceedings were recorded by the Enquiry Officer. She does not dispute authenticity of the enquiry proceedings, filed on record of the Tribunal. Therefore, enquiry proceedings would be looked into in order to ascertain as to whether the enquiry conducted was not in consonance with principles of natural justice.

32. Charge sheet dated 07.01.1994 has been placed on record, contents of which are not disputed at all. When charge sheet is scanned, it came to light that charges levelled therein are couched in intelligible words, which make the claimant well known about the charges which are to be defended by her. There is no ambiguity in the charge sheet, which may come in her way for preparation of defence. She was informed through the charge sheet as to what are the charges which would be proved during the course of enquiry. It emerged over the record that the charge sheet, served on the claimant, was well worded without any ambiguity therein.

33. Proceedings dated 28.11.1994 make it apparent that the claimant appeared before the Enquiry Officer, who explained charges to her. She understood the charges and denied all the allegations. Procedure of the enquiry was explained to her. She was told that she was free to take assistance from a defence assistant, in terms of provisions of Bipartite Settlements. List of witnesses and documents were supplied to the claimant. The Presenting Officer placed 19 documents before the Enquiry Officer, which were taken over the record by him. Enquiry was adjourned for 02.12.1994, on which date, claimant appeared before the Enquiry Officer alongwith Shri K.R. Nagpal, here defence assistant. Shri Nagpal made a request to inspect original of the documents, relied by the Presenting Officer in the matter. He explains that since two documents were at Kallirampur branch of the bank, the same would be inspected there in the branch. The Presenting Officer made it clear that copy of FDR No.20 of 1991 and account opening form dated 04.02.1991 alongwith promissory note of the claimant were seized by the CBI. He placed seizure memo for inspection. Original of other documents, than referred above, were inspected by Shri Nagpal on that date. Enquiry proceedings were adjourned to be held on 23.12.1994 at Kallirampur branch of the bank.

34. On 23.12.1994, documents, viz, copy of credit cash voucher of MBFD (Account No.238) FD 20 of 91 for a sum of Rs. 6000.00 and copy of ledger sheet in respect of FD Account No. 238 dated 02.02.1991 for a sum of Rs. 6000.00 favouring the claimant were inspected by Shri Nagpal there at Kallirampur branch of the bank.

35. On 16.01.1995, the defence representative made it clear that except the documents seized by the CBI, rest of the documents are not disputed. Shri Pradeep Kumar Aggarwal was examined by the bank before the Enquiry

Officer on that date. He was cross examined by the defence assistant, but in part. His further cross examination was conducted on 24.01.1995. Enquiry was adjourned for 01.02.1995.

36. On 01.02.1995, the defence assistant made a request to the Enquiry Officer to record statement of Shri Pritam Singh Bedi, in defence of the claimant. The Enquiry Officer made it clear that the defence witness would be examined at the appropriate stage. However, at the request of the defence assistant, who claimed that Shri Bedi would not be available thereafter, Shri P.S. Bedi was examined as defence witness on that date. The Enquiry Officer made it clear that as a special case, he had recorded statement of Shri Bedi in between, without concluding evidence of the bank. After examination of Shri Bedi, Shri B.L. Gupta was examined by the Presenting Officer. Cross examination of Shri Gupta was also concluded. The Presenting Officer closed his evidence in the enquiry and proceedings were adjourned for 14.02.1995.

37. On 14.02.1995 Shri Nagpal made a statement that he does not want to remain defence assistant any further. Claimant made it clear that except her own statements, she would not adduce any other defence evidence. At her request, enquiry proceedings were adjourned for 21.02.1995. On 21.02.1995, claimant testified in her defence. Evidence before the Enquiry Officer was closed by her.

38. Claimant asked for cash book dated 02.02.1991 relating to FDR No.20/91 prepared at Kallirampur branch, cashier's long book dated 02.02.1991, photocopy of FDR register, counterfoil of FDR and copy of AOF pertaining to FDR No. 20 of 91, which documents were not supplied to her. She claims that by non-supply of the above documents, she was not given an opportunity to defend herself. When her contention is appreciated in the light of facts brought over the record, it emerged that issuance of FDR No. 20 of 91 by Kallirampur branch is not a disputes fact. Copy of cashier's long book, counterfoil of the FDR, copy of FDR issue register and AOF were demanded by the claimant in order to show that the FDR in question was issued for a sum of Rs.60,000.00 and not for a sum of Rs. 6,000.00. These documents were inspected by her at Kallirampur branch on 23.12.1994. Furthermore, by the time she asked for these documents, Shri P.S. Bedi was examined by her in defence. Facts stated by Shri Bedi in EX.WW1/M3 were relied by the claimant wholeheartedly. In Ex.WW1/M3, Shri Bedi projected that the claimant was only a name lender for the amount, which he was to deposit in FD account. He admits issuance of FDR for Rs.6000.00 and inflation of that amount to Rs.60,000.00, in Ex.WW1/M3. In the light of these facts, her claim for supply of documents was not justified.

39. As detailed above, all documents, needed to prepare her defence were supplied to the claimant. She was allowed to be defended by a representative of her choice. When Shri Nagpal withdraw himself, she opted to defend herself in person. Witnesses were examined by the bank in her

presence. She was given opportunity and right to cross-examine witnesses examined by the bank. She was allowed to examine witnesses in her defence, including herself. She was heard over the matter. All these aspects make it clear that due and reasonable opportunities were given to the claimant to defend herself.

40. Enquiry report was perused to ascertain as to whether it was based on evidence Produced before the Enquiry Officer or perverse. For this purpose the Tribunal has to assess the report to know whether findings recorded is based on material available on record. What are the standards on which the Tribunal may record its "satisfaction" to the effect that findings of misconduct, recorded by the Enquiry Officer, is correct? One of the tests, which the Tribunal is entitled to apply, is whether the conclusion of the Enquiry Officer was perverse or whether there was basic error in approach adopted by him. There should be a report recorded by the Enquiry Officer and there should be correlation between the evidence and findings recorded, showing application of mind. Findings of the Enquiry Officer must be supported by legal evidence. Report of the Enquiry Officer will be vitiated where he acts mala fide, that is, ignored or excluded from consideration a vital and material piece of evidence or took into consideration any irrelevant or extraneous material or where he transgressed rules of natural justice by being biased against the workman or denied to the delinquent employee a reasonable opportunity to defend or where his report is perverse, id est the findings are not supported by any evidence or entirely opposed to the evidence on record. Reference can be made to precedent in Ved Prakash Aggarwal (1996 Lab. I.C. 120) and S.C.Prasad [1969 (II) LLJ 799]. However, it must be borne in mind that the person appointed to hold such enquires are not lawyers. A wrong finding is not necessarily a perverse finding and a finding cannot be described to be perverse merely because it is possible to take a different view on the evidence. See precedents in Parry & Co. [1966 (1) LLJ 535] and New Victoria Mills Ltd. (1970 Lab. I.C. 428). Law laid in Ved Prakash Aggarwal (supra) and Elgin Mills Cc. [1931 Lab. I.C. (NOG) 172] also supports that view.

41. In deciding the question as to whether a particular conclusion of fact was perverse or not, the Tribunal would not be justified in weighing the evidence for itself and determining the question of perversity of the view arrived at by the Enquiry Officer in the light of his own findings on the question of fact. See Hamdard Dawakhana Wakf [1962 (II) LLJ 772]. In a domestic enquiry, once a conclusion is decided from evidence, it is not permissible to assail that conclusion even through it is possible for some other authority to arrive at a different conclusion on the same evidence. Reference can be made to Banaras Electricity Light and Power Co. Ltd. [1972(11) LLJ 328]. Legal position, detailed in above precedents, changed on introduction of section 11A of the Act.

42. In Powari Tea Estate [1965 (II) LLJ 102] and Khardah and Co. Ltd. [1963(11) LLJ 452] the Apex Court ruled that the enquiry report is a document which will have to be closely examined by the Industrial Tribunal when a dispute pertaining to disciplinary action against the employee is brought before it for its adjudication. The Calcutta High Court declares in Howrah Trading Co. (Pvt.) Ltd. [1996 (II) LLJ 282] that a cryptic report, for instance, without stating any reasons will be of little value. Failure of the Enquiry Officer to record his findings and conclusions at the end of the enquiry would render the enquiry invalid. Non-production of the enquiry report before the Industrial Tribunal led to a declaration that the enquiry was invalid, when there was no evidence that a report was at all recorded by the Enquiry Officer. See Samnuggur Jute Factory Co. Ltd. [1994(I) LLJ 634]. In Prakash Chand Jain [1969 (II) LLJ 377] the Apex Court announced that the report of the Enquiry Officer must be supported by legal evidence. In Rajinder Kumar Kindra [1984 (II) LLJ 5245] it was further stated by the Supreme Court that where findings are based on no legal evidence and are either ipse dixit or based on conjectures and surmises unrelated to evidence and they disclose non-application of mind, such findings and conclusions are perverse.

43. Findings recorded in a domestic enquiry can be characterised as perverse only if (a) there was no evidence whatsoever to support the findings, or (b) conclusion recorded were diametrically contrary to the evidence on record, or (c) conclusions were such that no reasonable person would have arrived at on above standards. When report of Enquiry Officer was scanned, there were no occasion for me to conclude that the report was not supported by evidence. Only contention advanced by the claimant was that ME 19 was obtained under duress, hence it has no evidential value. She asserts that ME 19 has been relied by the Enquiry Officer, which fact vitiates his findings. Facts projected by Shri Pradeep Kumar Aggarwal and Shri Babu Lal Gupla bring home guilt to the claimant. Statement made by Shri Bedi belies her story that she paid a sum of Rs. 60,000.00 to him for issuance of an FDR. Whatever she has testified before the Enquiry Officer is in contrast to the evidence unfolded by Shri Bedi. It emerges over the record that these facts were taken into consideration by the Enquiry Officer and he reached the conclusion, which is based on cogent evidence. The Enquiry Officer had not ignored any material while recording his conclusion. It cannot be said that he ignored version projected by the claimant and Shri Bedi. It became evident that the findings recorded by the Enquiry Officer are based on evidence and his report is not vitiated at all.

44. In view of reasons detailed above, it is evident that the enquiry conducted by the Enquiry Officer was in consonance with principles of natural justice. He gave full opportunity to the claimant to prepare her defence. She was permitted to cross-examine the witness examined by

the bank in order to demolish their version. She was allowed to erect her edifice of defence by producing her own evidence. She was permitted to be defended by a representative of her choice. When Shri Nagpal withdrew himself, she claimed that she would defend herself. These facts make it apparent that the enquiry was just, fair and proper. No illegality emerged out of the enquiry proceedings and the report of the Enquiry Officer. Issue relating to virus of the enquiry cannot be answered in favour of the claimant. Resultantly, it is concluded that the enquiry conducted by the bank was just fair and proper. Issue No. 1 is answered in favour of the bank and against the claimant.

Issue No. 2

45. When enquiry is found to be fair and proper, the Tribunal cannot proceed to appreciate evidence adduced before it by the bank as well as claimant. However, in view of the directions issued by the High Court in its order dated 17.04.2013, I proceed further to appreciate evidence brought over the record and to record findings on the count as to whether charges stood proved against the claimant or not. In subsequent sections evidence adduced by the bank to prove misconduct and evidence brought over the record in rebuttal by the claimant would be scanned, in order to see whether misconduct stood established.

46. Ms. Rimi Ray, Manager (HR), unfolds in her affidavit Ex.MW2/A, tendered as evidence, that charge sheet was issued to the claimant on 07.02.1994. Corrigendum to the charge sheet was issued on 30.06.1994, It was alleged that the claimant, while working as ALPM Operator(standby) in Parliament Street branch, entered into criminal conspiracy with Shri P.S Bedi, then Manager, BO; Kallirampur and with an intention to defraud the bank, she got prepared FDR No.20/91 from Kallirampur branch. The said FDR was issued for Rs. 6,000.00 and inflated to Rs.60,000.00 with ulterior motive. It was further alleged against her that on 04.02.1991, she raised a demand loan No.110 of 95 for Rs. 60,000.00 on above inflated FDR and got credited that amount in her current account (OD No.10671), On that date, she got debited CA(OD No.10671) and deposited Rs. 35938.10 for adjustment of her Demand Loan account No.73/25. She also credited a sum of Rs. 1,000.00 in her demand Loan account No.74/25 through overdraft account No. 10671 on 04.02.1991 itself. She had intentionally used the above amount of demand loan against FDR No. 20 of 91. On 28.02.1994, she deposited a sum of Rs.66500.00 though the FDR was to mature after 5 days. These facts made the bank to believe that she wanted to take possession of the inflated FDR before maturity date, so that it may not be sent back to the issuing branch and that documentary evidence may not be available to the bank.

47. Ms. Rimi Ray brings copy of charge sheet Ex.MW1/1 and corrigendum Ex.MW1/2, cash voucher of Multi Benefit Fixed Deposit Account No.238 for FD No.20/91 for a sum of Rs.6,000.00 Ex. MWI/3, ledger sheet of fixed deposit account No.238 dated 02.02.1991 Ex. MW1/4, copy

of FDR No.20/91 dated 02.02.1991 as Ex.MW2/5, copy of request dated 04.02.1991 alongwith with the promissory note issued by the claimant and request for demand loan Ex.MW1/6, copy of debit transfer voucher of Demand Loan Account No.110/25, copy of credit transfer voucher of Overdraft account No.10671, copy of ledger sheet of demand loan account No.110/25 dated 04.02.1991, copy of debit transfer voucher of Overdraft account No.1067 Ex. MW1/7, copy of credit transfer of OD account No.10671 Ex. MW1/8, copy of ledger sheet of DL Account No.11025 dated 04.02.1991 Ex. MW1/9. Copy of debit transfer voucher of OD No. 10671 for Rs. 35938.10 Ex. MW1/10 over the record. Copy of transfer voucher of DL Account No. 73/25 for a sum of Rs.35398.10 dated 04.02.91. which is Ex. MW1/11, copy of ledger sheet of DL account No.73/25 Ex. MW1/12, copy of debit transfer for a sum of Rs.1000,00 dated 06.02.91 Ex. MW1/13P transfer voucher for demand loan account No.74/25 for a sum of Rs.1000.00 Ex. MW1/14 are also placed on record. She had also proved copy of ledger sheets for demand loan 74/25 and overdraft account No.671 as Ex.MW1/15 and Ex.MW1/16 respectively. Letter dated 29.01.1992, addressed by the claimant to the Branch Manager, BO Parliament Street, has also been brought over the record as Ex. MW1/17.

48. Shri P.K. Aggarwal swears in his affidavit Ex.MW3/A, tendered as evidence, that he was working at BO: Kallirampur branch from October, 1989 to 1991. Hence, he is well conversant with the facts relating to fraud committed in preparation of FDR in the name of the claimant. Credit cash voucher dated 04.02.1991 and FDR 20/91 were prepared in the name of the claimant. Credit cash voucher was for a sum of Rs.6000.00 and entry in that regard was recorded in the accounts statement and maturity value is also reflected in the statement in that regard. He asserts that FDR No.20/91 was for Rs.6000.00 only.

49. In her affidavit Ex. W1/B, tendered as evidence, the claimant details that from 15.09.1981 to 09.04.1987, she was posted at Tilak Nagar branch of the bank as clerk/cashier. She worked under overall charge of Shri PS Bedi, then Assistant Branch Manager. Shri Bedi was later on transferred to BO: Kallirampur branch as Branch Manager. She qualified the test for ALPM Operator and as such was posted at, Barakhamba Road branch of the bank on 27.12.1989. In April 1990, she was posted at Parliament Street branch of the bank.

50. She unfolds that in November 1991, Shri Bedi approached and requested her to give some deposit to enable him to fulfil target of deposits in his branch. He initially asked for Rs. 50,000.00, which amount she gave to him. Thereafter, he further asked for an amount of Rs.10,000. She gave that amount too. She gave a total sum of Rs. 60,000.00 in cash by withdrawing sum of Rs. 50,000.00 from her overdraft account No.10671 through cheque No.910702 on 15.11.1990 and Rs.10,000.00 vide cheque No. 910705 on 21.11.1990. She filled in details and signed the AOF.

Ledger sheet of her account reflects above two entries, copy of which ledger sheet is Ex. MW2/16. Copy of AOF, which was seized by the CBI, is Ex. WW1/7. She kept on requesting Shri Bedi for FDR and only on 03.02.1991 FDR for a sum of Rs. 60,000.00 was handed over to her by Shri Bedi. Copy of FDR is Ex. MW2/5. On 04.02.1991, she made a written request to Parliament Street branch of the bank for a loan of Rs. 60,000.00 on the said FDR. At her request, Loan of Rs. 60,000.00 was sanctioned. At that time, the bank had checked veracity of the FDR. FDR was genuine and not inflated. If it would have been inflated the bank would not have granted any loan to her. For marking lien on FDR, the bank must have written letter to Kallirampur branch. The bank had not disclosed copy of that letter to her. However, she produced copy of letter written by Kallirampur branch to Parliament Street branch of the bank, confirming that lien was marked on the said FDR, which shows face value of Rs. 60,000.00. The FDR was signed by Shri Pradeep Kumar Aggarwal as well as Shri P.S. Bedi. Letter Ex. MW3/W1, which projects that lien was marked on the FDR, makes it apparent that FDR was for a sum of Rs. 60,000.00.

51. After receipt of loan on 04.02.1991, she got debited her Current Account (overdraft 10671) to the tune of Rs. 35379.10 for adjustment of Demand Loan account 73/25. On 06.02.1991, she also got credited a sum of Rs. 1000.00 in her demand loan account No. 74/25 through the aforesaid overdraft account. Entries in that regard are reflected in ledger sheet, copy of which is Ex. MW2/16. On 18.01.1992, the bank claimed that only a sum of Rs. 6000.00 was deposited in Kallirampur branch against FDR in question. To show her bonafide, when was called upon to pay loan amount obtained against the said FDR, she paid the loan amount with interest, amounting to Rs. 66,500.00. However, FDR and remaining balance of Rs. 289.20 was not returned back to her. The bank grabbed the FDR and did not release it in her favour. On 19.04.1992, it was seized by the CBI. The bank had tried to hide the original FDR so that this Tribunal may not look at it to note facts personally.

52. On 29.01.1992 she was called by the Chief Manager in his cabin, details the claimant. Shri B.L. Gupta was also present there. She was threatened to face dire consequence and made to write confessional statement on dotted lines. Shri B.L. Gupta admitted that fact during the course of enquiry. Copy of confessional statement, obtained under duress is Ex. MW2/12. On 30.01.1992, she was placed under suspension without assigning any reasons. On 31.01.1992, another suspension order was issued to full up the gaps. Charge sheet was not issued to her within a period of 90 days, as contemplated by the rules. On 03.03.1992, she wrote to the Assistant General Manager that confessional statement dated 29.01.1992 was obtained under duress and coercion. Copy of that letter is Ex. MW2/W8. After a delay of more than 2 years, charge sheet was served upon her, wherein it was claimed that she committed fraud by misusing her official position as a staff member

and committed acts prejudicial to the interest of the bank. She had been blamed for acts, committed by Shri P.S. Bedi, Branch Manager, Kallirampur branch of the bank. Shri Bedi admitted before the Enquiry Officer that he committed all the wrongs. Shri Pradeep Kumar Aggarwal has also placed the blame on Shri Bedi. It was Shri Bedi who had cheated the bank and defrauded it in respect of about 29 FDRs.

53. FDR is usually signed by an Accountant and a Manager. Herein the case, FDR was signed by Shri Pradeep Kumar Aggarwal and Shri P.S. Bedi. Shri Bedi had committed fraud on the bank. He deposited only a sum of Rs. 6000.00 despite the fact that he had received Rs. 60,000.00 from her. Shri Pradeep Kumar Aggarwal should have signed the FDR only after verifying all details of receipt. There was no entry of Rs. 6000.00 on 02.02.1991. No such entry was recorded in cashiers' long book on 02.02.1991. These facts make it apparent that she was made a scapegoat to cover misdeeds of higher officials. Misdeeds of Shri Bedi were not within her knowledge. When Shri Pradeep Kumar Aggarwal could not notice manipulation and bungling committed by Shri Bedi, how could she know that Shri Bedi did manipulation in the FDR. Neither Shri Bedi nor Shri Aggarwal were charge sheeted in respect of manipulations on the FDR. Under such circumstances, how can she be accused for that gamut.

54. She details that there was no overwriting or erasing on the FDR. It was clearly drawn for a sum of Rs. 60,000.00 in figures and words with maturity value of Rs. 66228.00. Maturity value of Rs. 6000.00 would be Rs. 6623.00 and maturity value of Rs. 60,000.00 would be Rs. 66228.00. By manipulation or inflation of Rs. 6000.00 to Rs. 60,000.00, maturity value cannot be inflated to Rs. 66228.00. The said FDR was scrutinised while granting loan to her. Kallirampur branch had marked lien in their books on the said FDR for a sum of Rs. 60,000.00. This fact further highlights that FDR was for a sum of Rs. 60,000.00 and genuine. Letter confirming lien on the FDR for Rs. 60,000.00 is Ex. MW3/W1. Neither she prepared the FDR nor made any entries in records of the bank. By no stretch of imagination it can be said that she misconducted herself and committed any act prejudicial to the interest of the bank. She was neither summoned nor called by the CBI or any law enforcing agency. She has not been challaned or charge sheeted at all. The bank had not been able to prove misconduct against her.

55. When facts unfolded by Ms. Rimi Ray, Shri Pradeep Aggarwal and the claimant scanned, it emerged that issuance of FDR, which has been proved as Ex. MW2/5, obtaining of loan of Rs. 60,000.00 on the said FDR from Parliament Street branch of the bank by the claimant and issuance of letter of marking lien in books of the bank are not at all disputed. No dispute is there on the count that after obtaining demand loan of Rs. 60,000.00 on the said FDR, claimant got credited that loan to her Current account (overdraft No. 10671) on 04.02.1991. There is also no dispute

on the facts that on 04.02.1991 itself, she got debited her Current Account (Overdraft No.10671) to the tune of Rs. 35938.10 for adjustment of her demand loan account No.73/25. It has also not been disputed that she got credited a sum of Rs.1000.00 in demand loan account No.74/25 through overdraft account No.10671 on 04.02.1994. It is also not a disputed fact that on 28.02.1999, she deposited Rs. 66,500.00 towards loan amount, while FDR was to mature just after five days. Request letter dated 04.02.1991, besides promissory note for demand loan, debit transfer voucher, credit transfer voucher, demand loan Account No.110/25, debit transfer voucher of overdraft account No.10671 for Rs.35938.10, copy of credit transfer voucher for Rs.35,398.10, copy of ledger sheet of demand loan account No.73/25, copy of debit transfer voucher of overdraft account No.10671 for Rs.1000.00, copy of transfer voucher of demand loan account No.74/25 for a sum of Rs.1000.00, copy of ledger sheet of demand loan account No. 74/25, copy of ledger sheet of overdraft account No.10671 and copy of letter dated 19.01.1992, addressed by the claimant to Manager, Parliament Street branch, are also not disputed.

56. Question for consideration is as to whether FDR, copy of which has been placed over the record as Ex. MW2/5, was issued for a sum of Rs. 6000.00 or for a sum of Rs. 60,000.00. On this issue, rival facts are testified. Ms. Rimi Ray and Shri Pradeep Kumar Aggarwal present one version while Ms. Sneha Aggarwal details the other. It has been claimed by Ms. Ray and Shri Aggarwal that the FDR was issued for a sum of Rs. 6000.00, which amount was later on inflated to Rs. 60,000.00. Ms. Sneha Aggarwal speaks of payment of Rs. 60,000.00 to Shri P.S. Bedi in November'90 and claims that the FDR in question was issued for a sum of Rs. 60,000.00 in February 1991. For reaching the true facts, the Tribunal had to appreciate their depositions in the light of the documents proved as well as statement made by Shri P.S. Bedi before the Enquiry Officer, copy of which has been proved as Ex. WW1/M3. When Ex. WW1/M3, is scanned it emerged that this document unfolds a different story than one presented by the claimant in her testimony. Facts detailed in Ex. WW1/M3 are reproduced thus:

"I confirm and certify that

- (a) I had approached Smt. Sneha Aggarwal who is working as ALPM Operator at BO: Parliament Street. She is well known to me. She has worked under me when I was A/M at BO: Tilak Nagar, Delhi.
- (b) I had told her in February 1991 that to fulfil my target of deposit, and to enable me to get my transfer back to Delhi, she may make her name available to me for issue of deposits and I will deposit the amount for fixed deposit depending on availability of funds with me. I took her signatures on the blank AOF form.
- (c) That subsequently after a few days, I took FDR No.QSC 009015 dated 02.02.1991 to her in the branch

and told that her that I had deposited Rs. 60,000.00 in FDR and she may take loan against the FDR and oblige me, being her senior. I prevailed upon her and told her that she may have to work under me again.

- (d) That before due date, I have deposited back the whole amount.
- (e) That the amount of FDR belongs to me.
- (f) That I will be responsible for this or any other liability of any kind.

Ms. Sneha Aggarwal is not responsible for anything whatsoever.

I confirm that I have written this conformation certificate of my own."

57. Ex. WW1/M3 was produced by Shri P.S. Bedi before the Enquiry Officer when he testified facts in defence of the claimant. Claimant was confronted with this document, when she entered the witness box in rebuttal to the facts adduced by the bank. She does not dispute that statement Ex. WW1/M3 was produced before the Enquiry Officer. She admits that in Ex. WW1/M3, Shri Bedi had recorded that he had deposited Rs. 60,000.00 from his own pocket and used her name. No other explanation was offered by the claimant in respect of contents of Ex. WW1/M3. Hence, it is crystal clear that statement of Shri P.S. Bedi, proved as Ex. WW1/M3, is an admitted document on which the claimant based her case when she defended herself before the Enquiry Officer. Therefore, this document confirms facts unfolded by Shri P.K. Aggarwal and dispels the story put forward by the claimant, in respect of amount for which FDR No. QSC 009015 was issued, copy of which has been proved as Ex. MW2/5.

58. Shri P.K. Aggarwal highlights that the FDR No.20/91 (copy of which has been proved as Ex. MW2/5) was for a sum of Rs. 6000.00 only. He presses credit cash voucher dated 04.02.1991 in service to substantiate his point of view. He went on to narrate that as per account statement, credit cash voucher was entered for Rs. 6000.00 only. Copy of debit cash voucher has also been proved by him as Ex. MW2/1 (inadvertently this document has been exhibited as Ex. MW1/3). During the course of his cross examination, he projects that the debit cash voucher is for a sum of Rs. 6,000.00 on which the date has been overwritten as 04.02.1991. He clarifies that this document is in the handwriting of Shri Bedi, who has overwritten the date over it. He further confirms that ledger sheet Ex. MW2/3 bears his as well as Shri Bedi's signatures. When Ex. MW2/3 and Ex. MW2/4 are scanned, it came to light that a sum of Rs. 6000.00 only was deposited in Kallirampur branch of the bank in respect of FDR No.20/91. This amount was deposited as per ledger sheet on 02.02.1991 while the date is overwritten to 04.02.1991 in debit cash voucher. Maturity value of the FDR has been shown as Rs. 6622.80 in ledger, proved as Ex. MW2/4. Neither in debit cash voucher nor in

ledger sheet amount of Rs. 60,000.00, in respect of the FDR No.20/91, has been projected. These documents make it apparent that only a sum of Rs. 6000.00 was deposited in the bank on 02.02.1991, though there is overwriting on debit cash voucher Ex. MW2/3.

59. Shri P.K. Aggarwal declares that letter Ex. MW3/W1 is in the handwriting of Shri P.S. Bedi. However, he concedes that it bears his signature at Point A. He declares that Ex. MW3/W1 was signed by him after going through the ledger. He announces that Ex. MW3/W1 was signed by him after it was signed by Shri Bedi. Shri Aggarwal explains that initially amount of Rs. 6000.00 was mentioned in Ex. MW3/W1, which amount was later on inflated by Shri Bedi to Rs. 60,000.00 by adding a 'zero' after the figure 'six' without changing the space of other zeros. However, he was in haste to say that one zero was added somewhere to make the amount Rs. 60,000.00, on this document. Facts projected by Shri Aggarwal happens to be correct, since in ledger sheet only an amount of Rs. 6000.00 is shown deposited against FDR No.20/91. One may venture to know as to what was the stand of Shri Bedi when he appeared before the Enquiry Officer as a witness in defence for the claimant. When enquiry proceedings Ex. WW1/M2 are scanned, it came to light that Shri Bedi testified facts before the Enquiry Officer on 01.02.1995. In his statement, he unfolds that on the FDR, he added words to make amount of the FDR read as '60' instead of '6' thus making it for Rs. 60,000.00 instead of Rs. 6000.00. He further declares that inflated figure of maturity value has also been written by him, which should have been Rs. 6622.80 as against Rs. 66,288.00 on ME 7, which document is photocopy of FDR No.QSE 009015 and proved as Ex. MW2/5. Lien was also marked by him. He admits that ME 5 (which has been proved as Ex. MW2/3 before this Tribunal) was also filled in by him.

60. Out of facts unfolded by Shri Bedi, besides his written statement proved as EX. WW1/M3 and those narrated by Shri Aggarwal, it came to light that Shri Bedi approached the claimant in February 1991 and requested to lend her name to the former for issuance of deposit receipt, to meet target of deposits. No money was tendered by the lady and Shri Bedi was to deposit the amount out of his own pocket, Shri Bedi deposited a sum of Rs. 6000.00 and issued FDR No. 20 of 1991. Later on, he inflated the amount of the FDR, besides its maturity value.

61. Claim made by Ms. Sneh Aggarwal to the effect that she paid a sum of Rs. 60,000.00 to Shri Bedi for issuance of FDR in her favour is a blatant lie. At one point of time, she placed reliance on facts stated by Shri Bedi and subsequently retracted that stand and tried to project that a sum of Rs. 60,000.00 was paid by her to Shri Bedi. She cannot approbate and reprobate facts. Even otherwise, the claimant allegedly gave a sum of Rs. 50,000.00 on 15.11.1990 and a sum of Rs.10,000.00 on 21.11.1990. FDR No. 20/91 was issued on 02.02.1991. No hue and cry was raised by

the claimant that FDR was issued in her favour after about 74 days. As per case projected by the claimant, she paid aforesaid amount out of her overdraft account to Shri Bedi. She had to pay interest @11.5% on the amount over drawn as testified by Shri B.L. Gupta before the Enquiry Officer, which statement has been proved as Ex. WW1/M1. She concedes during the course of her cross examination that Shri Gupta was not questioned by her when he deposed that interest of 11.5% was charged by the bank on overdraft account. Thus it is crystal clear that Smt. Aggarwal paid interest of 11.5% on the amount which she had overdrawn from her overdraft account. The amount, so over drawn, was allegedly paid to Shri Bedi for issuance of FDR for Rs. 60,000.00. It is an admitted case of the claimant that interest @10% is paid by the bank on FDR. She could not project as to why she suffered loss of interest to the tune of 1.5% and had not questioned Shri Bedi for issuance of FDR even after 74 days, for which period she had not earned any interest. Above facts bring it to the light that Shri Ms. Sneh Aggarwal wrongly claims to have paid a sum of Rs. 60,000.00 to Shri Bedi for issuance of FDR in her favour. In fact, she had not paid any money to Shri Bedi, who had used her name only. As projected above, Shri Bedi deposited Rs. 6,000.00 only with the bank and issued FDR for that amount, which amount was later on inflated by him to the tune of Rs. 60,000.00.

62. It is an admitted case of the parties that on FDR No.QSC 009015, copy of which has been proved as Ex.MW2/5, claimant obtained demand loan of Rs.60,000.00 from Parliament Street branch of the bank. She deposited the original FDR with Parliament Street branch. The authorities at Parliament Street branch were under an obligation to send the original FDR to Kallirampur branch of the bank for marking of lien. However, no letter was written by Parliament Street branch to Kallirampur branch for marking of lien on FDR No.QSC 009015. On the other hand, the claimant obtained letter Ex. MW3/W1 from Shri Bedi, who declared therein that lien to the tune of Rs. 60,000.00 has been marked in record of the bank, in respect of FD No. 20 of 91. This document was produced by Ms. Aggarwal before Parliament Street branch of the bank in token of fact that lien has been marked over it by Kallirampur branch of the bank. When no amount was paid by Ms. Aggarwal to Shri Bedi and the latter issued an FDR for a sum of Rs. 6000.00, which amount was later on inflated by him, then Ms. Aggarwal was well aware of the fact that the document, which was been handed over to her, does not represent true facts. Shri Bedi duped the bank and handed over FDR No.QSC 009015 to Smt. Sneh Aggarwal after inflating its face value sum of Rs. 6000.00 to Rs. 60,000.00. Without obtaining letter from Parliament Street branch of the bank, Shri Bedi gives letter to the effect that lien was marked by Kallirampur branch in its record for a sum of Rs. 60,000.00 on FDR No.QSC 009015. All these facts project that Smt. Sneh Aggarwal was in league with Shri Bedi and the latter had committed fraud, of which the former was beneficiary.

63. Conspiracy is hatched in dark. Direct evidence of a conspiracy is seldom available. Conspiracy is a matter of inference deduced from certain criminal acts of the parties accused, done in pursuance of an apparent criminal purpose common between them. Generally, conspiracy is a matter of inference by circumstantial evidence. From acts and conduct of the parties, agreement could be inferred. For instance, if it can be proved that the accused pursued by similar acts the same object often by the same means, one performing one part of the act and the other another part of the same act so as to complete it with a view to the attainment of the object which they were pursuing, it would be perfectly proper to conclude that they have conspired together to effect that object.

64. When the claimant tries to project that a sum of Rs. 60,000.00 was paid by her to Shri Bedi for the FDR in question, despite the fact that she relies on facts unfolded by Shri Bedi before the Enquiry Officer. These events make it apparent that though the claimant was hand in glove with Shri Bedi, yet she wants to project her face clean. Admittedly, Shri Bedi was posted in Kallirampur branch, which was a distance of about 80 kms. away from the branch where the claimant was posted at the relevant time. She projects that Shri Bedi approached her to provide him some amount to meet out his targets of deposits. When Shri Bedi was working as Assistant Manager at Tilak Nagar branch of the bank, there were other employees working in that branch, with whom Shri Bedi also remained associated. But he approaches only the claimant, in whose favour he prepares forged negotiable instrument, without obtaining any consideration. He issues letter showing marking of lien in books of the bank in order to help her in obtaining demand loan from Parliament Street branch of the bank. All these facts make out that there was a conspiracy between the claimant and Shri Bedi. Whatever was said, done and written by Shri Bedi in furtherance of the conspiracy referred above, would be relevant against the claimant. Resultantly, it is said that debit cash voucher of Rs. 6000.00 and ledger sheet proved as Ex. MW2/3 and Ex. MW2/4 respectively would be relevant in adjudication of the present controversy. These documents were issued for a sum of Rs. 6000.00 only. Hence, these documents castigate the claim put forward by Ms. Aggarwal to the effect that she paid a sum of Rs. 60,000.00 and FDR in question was issued for that amount. Facts unfolded by Shri Bedi before the Enquiry Officer in his testimony as well as written statement proved as Ex. WW1/M2 and EX. WW1/M3 respectively bring it to the light that the FDR in question was issued for a sum of Rs. 6000.00 only, which amount and maturity value were later on inflated by Shri Bedi. Resultantly, it is crystal clear that Ms. Aggarwal was well aware that the FDR in question was originally issued for a sum of Rs. 6000.00 but was subsequently inflated for a sum of Rs. 60,000.00 by Shri Bedi with a view to help her to obtain demand loan for Rs. 60,000.00.

65. When claimant presented FDR QSC 009015 to Parliament Street branch of the bank for obtaining demand loan of Rs. 60,000.00, at that time she was well aware that the negotiable instrument was forged one. She presented that forged document and used it as a genuine one to obtain demand loan. Resultantly, it is crystal clear that the acts of the claimant in using a forged document as genuine one, knowing it will to be forged, is a misconduct of culpable nature. The bank had been able to prove misconduct against the claimant beyond doubt, which is of grave nature.

66. What should be the appropriate punishment, which can be awarded to the claimant, is a proposition which would be addressed by this Tribunal. Right of an employer to inflict punishment of discharge or dismissal is not unfettered. The punishment imposed must commensurate with gravity of the misconduct, proved against the delinquent workman. Prior to enactment of section 11-A of the Industrial Disputes Act, 1947 (in short the Act), it was not open to the industrial adjudicator to vary the order of punishment on finding that the order of dismissal was too severe and was not commensurate with the act of misconduct. In other words, the industrial adjudicator could not interfere with the punishment as it was not required to consider propriety or adequacy of punishment or whether it was excessive or too severe. Apex Court, in this connection, had, however, laid down in *Bengal Bhatdee Coal Company* [1963(I) LLJ 291] that where order of punishment was shockingly disproportionate with the act of the misconduct which no reasonable employer would impose in like circumstances, that itself would lead to the inference of victimization or unfair labour practice which would vitiate order of dismissal or discharge. But by enacting the provisions of section 11-A of the Act, the Legislature has transferred the discretion of the employer, in imposing punishment, to the industrial adjudicator. It is now the satisfaction of the industrial adjudicator to finally decide the quantum of punishment for proved acts of misconduct, in cases of discharge or dismissal. If the Tribunal is satisfied that the order of discharge or dismissal is not justified in any circumstances on the facts of a case, it has the power not only to set aside order of punishment and direct reinstatement with back wages, but it has also the power to impose certain conditions as it may deem fit and also to give relief to the workman, including award of lesser punishment in lieu of discharge or dismissal.

67. It is established law that imposing punishment for a proved act of misconduct is a matter for the punishing authority to decide and normally it should not be interfered with by the Industrial Tribunals. The Tribunal is not required to consider the propriety or adequacy of punishment. But where the punishment is shockingly disproportionate, regard being had to the particular conduct and past record, or is such as no reasonable employer would ever impose in like circumstance, the Tribunal may treat the imposition of such punishment as itself showing victimization or unfair

labour practice. Law to this effect was laid by the Apex Court in Hind Construction and Engineering Company Ltd. [1965 (I) LLJ 462]. Likewise in Management of the Federation of Indian Chambers of Commerce and Industry [1971 (II) LLJ 630] the Apex Court ruled that the employer made a mountain out of a mole hill and had blown a trivial matter into one involving loss of prestige and reputation and as such punishment of dismissal was held to be unwarranted. In Ram Kishan [1996 (I) LLJ 982] the delinquent employee was dismissed from service for using abusive language against a superior officer. On the facts and in the circumstances of the case, the Apex Court held that the punishment of dismissal was harsh and disproportionate to the gravity of the charge imputed to the delinquent. It was ruled therein, "when abusive language is used by anybody against a superior, it must be understood in the environment in which that person is situated and the circumstances surrounding the event that led to the use of abusive language. No Straight-jacket formula could be evolved in adjudicating whether the abusive language in the given circumstances would warrant dismissal from service. Each case has to be considered on its own facts".

68. In B.M. Pati [1996 (II) LLJ 536], Justice Mohan Kumar of Karnataka High court observed that in exercise of discretion, the Disciplinary Authority should not act like a robot and justice should be moulded with humanism and understanding. It has to assess each case on its own merit and each set of fact should be decided with reference to the evidence recording the allegation, which should be basis of the decision. The past conduct of the worker may be a ground for assuming that he might have a propensity to commit the misconduct and to assess the quantum of punishment to be imposed. In that case a conductor of the bus was dismissed from service for causing revenue loss of 50p to the employer by irregular sale of tickets. It was held that the punishment was too harsh and disproportionate to the act of misconduct.

69. After insertion of section 11-A of the Act, the jurisdiction to interfere with the punishment is there with the Tribunal, who has to see whether punishment imposed by the employer commensurate with the gravity of the act of misconduct. If it comes to the Conclusion that the misconduct is proved, it may still hold that the punishment is not justified because misconduct alleged and proved is such as it does not warrant punishment of discharge or dismissal and where necessary, set aside the order of discharge or dismissal and direct reinstatement with or without any terms or conditions as it thinks fit or give any other relief, including the award of lesser punishment, in lieu of discharge or dismissal, as the circumstance of the case may warrant. Reference can be made to a precedent in Sanatak Singh (1984 Lab.LC.817). The discretion to award punishment lesser than the punishment of discharge or

dismissal has to be judiciously exercised and the Tribunal can interfere only when it is satisfied that the punishment imposed by the management is highly disproportionate to the decree of the guilt of the workman. Reference can be made to the precedent in Kachraji Motiji Parmar [1994 (11) LLJ 332]. Thus it is evident that the Tribunal has now jurisdiction and power of substituting its own measure of punishment in place of the managerial wisdom, once it is satisfied that the order of discharge or dismissal is not justified. On facts and in the circumstances of a case, section 11A of the Act specifically gives two folds powers to the Industrial Tribunal, first is virtually the power of appeal against findings of fact made by the Enquiry Officer in his report with regard to the adequacy of the evidence and the conclusion on facts and secondly of foremost importance, is the power of reappraisal of quantum of punishment.

70. In Bharat Heavy Electricals Ltd. [2005 (2) S.C.C. 481] the Apex Court was confronted with the proposition as to whether power available to the Industrial Tribunal under section 11-A of the Act are unlimited. The Court opined that "there is no such things as unlimited jurisdiction vested with any judicial or quasi judicial forum and unfettered discretion is sworn enemy of the constitutional guarantee against discrimination. An unlimited jurisdiction leads to unreasonableness. No authority, be it administrative or judicial, has any power to exercise the discretion vested in it unless the same is based on justifiable grounds supported by acceptable materials and reasons thereof". The Apex Court relied its judgement in C.M.C. Hospital Employees Union [1987 (4) S.C.C. 691] wherein it was held that "section 11-A cannot be considered as conferring an arbitrary power on the Industrial Tribunal or the Labour Court. The power under section 11-A of the Act has to be exercised judiciously and the Industrial Tribunal or Labour Court is expected to interfere with the decision of a management under section 11-A of the Act only when it is satisfied that the punishment imposed by the management is highly disproportionate to the degree of guilt of the workmen concerned. The Industrial Tribunal or Labour Court has to give reasons for its decision". In Hombe Gowda Educational Trust [2006 (1) S.C.C. 430] the Apex Court announced that the Tribunal would not normally interfere with the quantum of punishment imposed by the employer unless an appropriate case is made out therefore.

71. Power to set aside order of discharge or dismissal and grant relief of reinstatement or lesser punishment is not untrammelled power. This power has to be exercised only when Tribunal is satisfied that the order of discharge or dismissal was not justified. This satisfaction of the Tribunal is objective satisfaction and not subjective one. It involves application of the mind by the Tribunal to various circumstances like nature of delinquency committed by the workman, his past conduct, impact of delinquency on employer's business, besides length of service rendered by him. Furthermore, the Tribunal has to consider whether

the decision taken by the employer is just or not. Only after taking into consideration these aspects, the Tribunal can upset the punishment imposed by the employer. The quantum of punishment cannot be interfered with without recording specific findings on points referred above. No indulgence is to be granted to a person, who is guilty of grave misconduct like cheating, fraud, misappropriation of employers fund, theft of public property etc. A reference can be made to the precedent in Bhagirath Mal Rainwa [1995 (I) LLJ 960].

72. Question for consideration comes as to whether punishment awarded to the claimant was shockingly disproportionate to his misconduct, justifying interference by this Tribunal, In Firestone Tyre and Rubber Company of India (Pvt.) Ltd. [1973 (1) S.C.C. 813], the Apex Court ruled that once misconduct is proved, the Tribunal had to sustain order of punishment unless it was harsh indicating victimisation. It has been further laid therein that if a proper enquiry is conducted by an employer and a correct finding arrived at regarding the misconduct, the Tribunal, even though now empowered to differ from the conclusion arrived at by the management will have to give very cogent reasons for not accepting the view of the employer. Again in Divisional Controller K.S.R.T.C. (N.W.K.R.T.C) [2005 (3) S.C.C. 254] it was laid that question of quantum of punishment would not be weighed on amount of money misappropriated but it should "be based on loss of confidence, which is a primary factor to be taken into account. Once a person is found guilty of misappropriating his employer's fund, there is nothing wrong for the employer to lose confidence or faith in such a person, awarding punishment of dismissal.

73. What would be the quantum of punishment that would commensurate to her misconduct? As detailed above, claimant entered into a conspiracy with Shri P.S. Bedi and in furtherance to that conspiracy FDR No.QSC 009015, issued for a sum of Rs.6000.00 only, was inflated to a sum of Rs.60,000.00 and handed over to the claimant for obtaining demand loan against it. She obtained a demand loan on the said FDR and used it as a genuine one, knowing it fully well to be a forged one. She obtained letter Ex.MW3/W1 from Shri Bedi, which was also a forged document, with a view to hide the fact that demand loan was obtained against a forged negotiable instrument. Not only this, she repaid full amount of loan a few days prior to maturity of FDR No. QSC 009015, with a view to restrain the bank authorities in sending the FDR to Kallirampur branch for obtaining its maturity value/vacation of lien. Had this document been sent to Kallirampur branch of the bank, the claimant would have been exposed. These circumstances make it apparent that with a view to conceal the melodrama, she cleared the loan a few days prior to maturity date of the FDR. Thus, it is obvious that the claimant had been acting against the interest of the bank. An employee who dupes his employer cannot be said to be worthy of credence. No

confidence can be maintained in such an employee. The bank is a financial institution where confidence and faith are of prime importance. The bank cannot retain such an employee in its services. Therefore, punishment of dismissal from service is appropriate punishment for such a misconduct. I find that punishment awarded to the claimant commensurate to her misconduct. Resultantly, on factual matrix too, I do not find a case for intervention.

74. In view of the facts detailed above, claim put forth by Ms. Aggarwal merits dismissal. Relief of reinstatement in service with continuity is not available to her. Her claim is brushed aside, An award is, accordingly, passed in favour of the bank and against the claimant. It be sent to the appropriate Government for publication.

Dated :30.12.2013 Dr. R.K. YADAV, Presiding Officer

नई दिल्ली, 6 फरवरी, 2014

का०आ० 666.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेंट्रल बैंक ऑफ इंडिया के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 306/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06/02/2014 को प्राप्त हुआ था।

[सं० एल-12012/104/1999-आई आर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 6th February, 2014

S.O. 666.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 306/1999 of the Cent. Govt. Indus.Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of Central Bank of India and their workmen, received by the Central Government on 06/02/2014.

[No. L-12012/104/1999-IR(B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR

NO. CGIT/LC/R/306/1999

Presiding Officer: SHRI R.B.PATLE

The Asstt. General Secretary,
Akhil Bhartiya Adhinasth Bank
Karmchari Sangh,
Central Office, Hazrat Pul,
Opp. Ashoka Palace, Lashkar,
Gwalior

...Workman/Union

Versus

Regional Manager,
Central Bank of India,
Nirma Bhavan,
Jhansi Road, Gwalior

...Management

AWARD

(Passed on this 22nd day of January 2014)

1. As per letter dated 22—29.9.1999 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-12012/104/1999-IR(B-II). The dispute under reference relates to:

"Whether the action of the management of Regional Manager, Central Bank of India in not absorbing Shri Ganpathrao Chouhan as a full time employee is justified? If not, what relief the workman is entitled to?"

2. After receiving reference, notices were issued to the parties. Ist party workman filed Statement of Claim at Page 5/1 to 5/2. Case of workman is that he worked as full time peon on temporary basis from 5.12.1983 to 25.2.1984 for 89 days, 19.4.1986 to 5.7.1986 for 78 days, he worked for 60 days in 1988 during the month of April May and June. He worked for total 226 days in IInd party Bank. He further submits that in 1996, the post of part time peon was advertised. He had also submitted application for said post on 9.1.1996. He was not called for interview. Other persons were employed. Workman submitted application in pursuance of letter dated 2.1.1996. That the Bipartite Agreement between SBI and All India SBI Staff Federation dated 27.10.1988, workman claims to be entitled for selection for post of part time messenger/peon. However he was not called for interview, he was deprived opportunity of selection. Workman himself submitted representations but of no avail. On such grounds workman prays that his non-absorption by the Bank is illegal. Management be directed to absorb him in service.

3. IInd party filed Written Statement at page 8/1 to 8/2. IInd party submits that the reference is liable to be dismissed as the Ist party workman was not employee of the Bank, he was never given appointment, he did not undergo process for selection. He was not sponsored through Employment Exchange. That the provisions of I.D. Act are not applicable. It is denied that the workman had worked for 226 days details submitted by the workman. That the workman was engaged on temporary basis as per need. He was paid wages after completion of the required job. His engagement for specific work stood terminated. IInd party further submits that no appointment can be made directly by any Authority of the Bank. Branch Manager has no power to appoint any person as class IV employee. As and when vacancy arises, appointment are made by process of interview, test and norms fixed by the Bank, the candidates sponsored by Employment Exchange. IInd party denied

that in pursuance to advertisement in 1996, workman was not called for interview. Workman had not submitted application as per advertisement. The claim of workman is denied totally. Workman is not entitled to be selected as full time or part time messenger. IInd party claims for rejection of claim.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

- | | |
|--|---|
| (i) Whether the action of the management of Regional Manager, Central Bank of India in not absorbing Shri Ganpathrao Chouhan as a full time employee is justified? | In Affirmative |
| (ii) If not, what relief the workman is entitled to?" | Workman is not entitled to relief claimed by him. |

REASONS

5. The Union Akhil Bhartiya Adhinasth Bank Karmchhari Sangh has submitted Statement of claim on behalf of workman Ganpat Rao, full name of workman is not given in the statement of claim. Union did not participate in the reference proceeding. Evidence is not adduced by the Union. The evidence of Ist party workman was closed on 26.7.2011. Management filed Affidavit of witness Pradeep Mullick denying workman Ganpat Rao was working in the Bank at any time. The management's witness was also not cross-examined. His evidence remained unchallenged. Thus it is clear that Union has not adduced evidence in support of his claim in statement of claim. Even workman has not examined himself in support of his claim. Evidence of management's witness remained unchallenged denying that workman Ganpat Rao worked in the Bank. There is absolutely no evidence to support the claim of Ist party workman. Copies of Bipartite Settlement are not produced. Therefore I record my finding on Point No. 1 in Affirmative.

6. In the result, award is passed as under:—

- (1) Action of the management of Regional Manager, Central Bank of India in not absorbing Shri Ganpathrao Chouhan as a full time employee is proper.
- (2) Workman is not entitled to relief claimed.

R.B. PATLE, Presiding Officer

नई दिल्ली, 7 फरवरी, 2014

का०आ० 667.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण,

चेन्नई के पंचाट संदर्भ संख्या 56/2011 को प्रकाशित करती है जो केन्द्रीय सरकार को 07/02/2014 को प्राप्त हुआ था।

[सं० एल-12012/04/2011-आई आर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 7th February, 2014

S.O. 667.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 56/2011 of the Cent. Govt. Indus. tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India and their workman, received by the Central Government on 07/02/2014.

[No. L-12012/04/2011-IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Tuesday, the 21st January, 2014

Present: K.P. PRASANNA KUMARI,
Presiding Officer

INDUSTRIAL DISPUTE No. 56/2011

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workman)

BETWEEN

Sri K. Ravindran : 1st Party/Petitioner

AND

1. The General Manager (HR) : 2nd Party/1st Respondent
State Bank of India, LHO,
16, College Lane
Chennai-600006
2. The Asstt. General : 2nd Party/2nd Respondent
Manager (Admn.)
State Bank of India,
McDonalds Road
Tiruchirapalli-620001

Appearance:

For the 1st Party/Petitioner : M/s. Row & Reddy,
Advocates

For the 2nd Party/1st & : M/s. T.S. Gopalan &
2nd Respondents Co., Advocates

AWARD

The Central Government Ministry of Labour & Employment *vide* its Order No. L-12012/04/2011-IR (B-I) dated 02.06.2011 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

"Whether the action of the management of State Bank of India, Tiruchirapalli in imposing the penalty of dismissal from service on Shri K. Ravindran, Ex-Special Assistant, *vide* their order dated 22.01.2009 is legal and justified? To what relief the workman is entitled?"

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 56/2011 and issued notice to both sides. Both sides have entered appearance through their counsel and have filed their claim, counter and rejoinder statement respectively.

3. The averments in the Claim Statement in brief are these:

The petitioner was employed as Special Assistant in the Respondent Bank. He had 32 years of unblemished service in the Bank. He was issued with a Charge Sheet dated 01.03.2008 containing three charges. The explanation given by the petitioner on these charges was not accepted and an enquiry was conducted against the petitioner. On the basis of the report of the enquiry the petitioner was dismissed from service on 22.01.2009. The appeal preferred by him against this order was dismissed. The dismissal of the petitioner from service is illegal. The punishment imposed on him is grossly disproportionate and is discriminative. The petitioner is entitled to be reinstated in service together with back wages, continuity of service and other benefits.

4. The Respondent filed Counter Statement contending as follows:

Since the Respondents represent the State Bank of India they are collectively referred to as Respondent. The Respondent Bank used to advance several types of loans including Gold Loan. The Clerical staff who are required to work as Cash Officers or Cashiers are paid a special allowance. Those Clerical Staff who are appointed as Special Assistants to act as Cash Officer are given framing in the matter of appraisal of gold jewels. Every branch of the Bank is provided with a touchstone and nitric acid to enable the Cash Officer to do the appraisal. The Bank staff will attend to the appraisal of the gold loans. The gold loans are repayable in a period not exceeding 12 months if sanctioned on agreed terms, or otherwise in a period of three years. The petitioner was working in Woraiyur branch of the Bank from October 2002 to 23.09.2005. During August 2005 to July 2005 the Bank had sanctioned 105 gold loans. 34 loans out of these were outstanding even after two years. Notices were sent to all the defaulting borrowers. Six notices were returned undelivered. Some of the addressees were not available also. When the concerned jewels were appraised, they were found to be spurious. Out of

such 10 loan accounts, 3 loans were cleared and were closed. There was a preliminary investigation regarding the matter. When the Investigation Officer tried to contact the 7 defaulters, he could contact only three of them. On investigation it was revealed that there was nexus between the petitioner and the acceptance of spurious jewels. A Show Cause Notice was issued to be petitioner on the charges that he had enabled the offer of spurious jewels for sanction of gold loans, failed to observe Know Your Customer norms and sanctioned loan to one Murugesan as benami to one Rajesh. On enquiry the charges were proved against the petitioner. The Disciplinary Authority had passed order dismissing the petitioner from service. The petitioner is not entitled to any relief. The petition is liable to be dismissed.

5. The petitioner has filed a reply affidavit by way of rejoinder after the Counter Statement was filed. In this he has reiterated his case in the petition.

6. The evidence in the case consists of oral evidence of WW1 and MW1 and documents marked as Ex. W1 to Ex.W23 and Ex.M1 to Exs. M15.

7. The points for consideration are :

- (i) Whether the dismissal of the petitioner from the service of the Respondent Bank by order dated 22.01.2009 is legal and justified?
- (ii) What is the relief the petitioner is entitled to?

The Points

8. The petitioner was admittedly working in the Woraiyur branch of the Respondent Bank at the time when the incidents alleged against him in the Charge Sheet by the Respondent Bank had occurred. The case of the Respondent is that the petitioner have been processing the gold loan applications during the period, that he had knowingly accepted spurious gold without observing Know Your Customer norms and had sanctioned loan even to benami. On departmental enquiry conducted by the Bank the charges were found proved and the punishment of dismissal from service was imposed on the petitioner. The appeal filed by him against the order of dismissal was also dismissed. The ID was raised accordingly.

9. Though there is a vague claim in the petition that the enquiry was not conducted in a proper manner, this claim is not seen pursued by the petitioner. On the other hand during the arguments the Counsel for the petitioner has been entirely depending on the evidence let in the enquiry to advance his case.

10. The attempt of the counsel for the petitioner during the argument has been to establish that the evidence available in the enquiry proceedings is not sufficient to establish the charges against the petitioner. In his report the Enquiry Officer has found that the relevant witnesses have uniformly deposed that ornaments pledged are not

owned by them but the charge sheeted employee gave his ornaments and made use of them to avail the loan and that the money was actually used by the charge sheeted employee. On analysing the evidence it was found by the Enquiry Officer that all the three charges against the petitioner are established.

11. It is not in dispute that the petitioner was the employee who was processing the gold loan during the period in question. In the Counter Statement, 7 gold loans are referred to in which gold were found to be spurious on appraisal by the gold appraiser. All these loans were admittedly processed by the petitioner. It is in this background the evidence given by the witnesses for the Management in the enquiry proceedings is to be analyzed. The Manager of the Branch at the time when the irregularities were detected was examined as PW1. He has stated that he had taken steps to close the time-barred gold loan accounts. He had referred to the 10 gold loans specifically mentioned in the Counter Statement and has stated that all these loans were processed by the petitioner. He has further stated that out of these 10 loan accounts, three accounts were closed. The jewel involved in all the 10 loans were found to be spurious.

12. PW2 to 6 are either the persons in whose name the loans were availed or those who have introduced them. PW2 is one who was having a Saving Account with Woraiyur branch of the Bank. A jewel loan of Rs 18,000 was seen taken in his name. When the relevant document concerning the loan was put to him during his examination he has stated that it contained his signature. According to this witness, one Rajesh owed Rs 15,000 to him. When he repeatedly requested for the amount, Rajesh gave him some jewels and asked him to get a jewel loan. According to him Rajesh had told him that on availing the loan he would return the money due to him and take the balance amount only. He is said to have told PW2 that the petitioner is his uncle. According to him, he was taken to the Bank. He had approached the Manager and had requested for a jewel loan showing his Pass Book. The Manager had directed him to the Loan Officer. Rajesh made him sign certain forms and sent him away. According to him, subsequently Rajesh gave him Rs 8,000 and one Ayesha who was introduced as the aunt of the petitioner had given him Rs. 7,000. Thus, his demand to get back the amount of Rs. 15,000 having been satisfied, he had no reason to complain about.

13. PW3 was also having a Savings Account at the Bank. According to him, one day while he was standing outside the branch Ganesan, a Sub-Staff (PW8) had told him that he is unable to avail a jewel loan in his name as he was a staff and had requested him to take loan in his name. He had gone to the Bank with Ganesan and had met the petitioner. He was made to put his signature in 6 or 7 places. He did not take any cash. He was not given document pertaining to loan also. Two years after this, the Branch Manager had enquired him about the loan. He met Ganesan

and tried to gather details from him. He closed the loan and the amount was reimbursed to him within a month by the petitioner. The jewels that he had received on closing the loan were also given back to the petitioner. It is stated that he handed over those jewels to the petitioner only after he had got back the money from him.

14. According to PW4, another account holder of the Bank PW8, Ganesan who is an employee of the bank had told him that the petitioner was calling him and had asked him to sign the jewel loan document. He has stated that when he signed the document, Ganesan and the petitioner were present. According to him, the petitioner had told him that the jewels belonged to him. He was made to put his signature in certain documents. The petitioner did not tell him what is the amount of loan. Nor did he get any amount also. Later, when the Manager and other Officers approached him he came to know that the jewels were fake. He approached the petitioner and the petitioner advised him to pay the amount and close the loan and did so. He subsequently got back the amount and returned the jewels to the petitioner.

15. PW5 has stated that he used to collect his pension through the Woraiyur Branch. On one occasion, when he went to the branch to collect his pension, the petitioner had requested him to pledge some ornaments and get a loan. He stated that since the petitioner was an Officer he respected him and availed loan in his name. He was not given any token or jewel loan card. He had obtained Rs 43,000/- from the jewel loan counter and he had given it to the petitioner who had wanted him to take the loan. When the branch officers approached him, he came to know the details and met the petitioner. The petitioner returned the entire amount. PW5 closed the jewel loan and returned the jewels to the petitioner.

16. The case of the PW6 is that Rajesh who is one of the 7 loanees referred to in the Counter Statement approached him and asked him to introduce him at the branch and accordingly he has signed as the introducer.

17. The gold involved in all the 7 loans referred to in the Counter Statement were found spurious on appraisal. All the witnesses referred to above have spoken about the involvement of the petitioner in availing the loans. All of them have stated that actually they have nothing to do with the loan amount but they were only obliging the petitioner or PW8, the Sub-Staff at the back and call of the petitioner.

18. It has been argued by the counsel for the petitioner that the material witness in the case was not examined and therefore the Enquiry Officer was not justified in entering a finding against the petitioner. According to him, the enquiry was vitiated in the absence of examination of the material witness. He has referred to the decision *Commissioner of Police, Delhi and Others vs. Jai Bhagwan* reported in 2001 6 LLJ 305 (SC) where it was held that non-examination of

the complainant during departmental proceedings amounts to denial of right of cross-examination to delinquent personnel. In the present case, according to the counsel for the petitioner, the appraiser who appraised the gold involved in the 7 loans should have been examined. According to him, in the absence of evidence by the appraiser there is nothing to show that the gold in the 7 loans were spurious. However, as pointed out by the counsel for the Respondent, no contention has been raised by the petitioner either in the departmental proceedings that the gold involved in these loans were not spurious. On the other hand, he has proceeded as if these were spurious loans but he is not responsible for the same.

19. An analysis of the evidence of Petitioner Witnesses 3 to 6 in the enquiry proceedings would show that these do not call for any doubt regarding the incredibility. All these witnesses have spoken about the involvement of the petitioner in the pledging of the jewels. Most of them have stated that it was at the instance of the petitioner that the papers regarding loans were signed. PW2 was cross-examined by the petitioner himself. During his Chief Examination PW2 has stated about the failed attempts made by him to meet the petitioner. He has stated that when he went to the house of Ayesha who was introduced as the Aunt of the petitioner in one such attempt he had seen the petitioner in the front balcony of her house and that on seeing the petitioner he had suddenly gone inside. He had further stated that Rajesh who is one of the loanees in the list submitted by the management also was there and that seeing him Rajesh had come outside and had shouted at him. When he was asked how he had approached the bank for a jewel loan even if he knew that the jewels were not his, he had stated that Rajesh had told him that his Uncle was working in the bank and he would be taking care of everything. Rajesh seems to have referred to the petitioner as his Uncle. PW5 has stated that he has nothing to do with the jewels that were pledged in his name. He has stated that when he went to the bank to collect his pension the petitioner had told him that he could not get a jewel loan in his name and had requested him to pledge the jewels in his name. He had obtained Rs. 43,000/- by pledging and had given the amount to the petitioner. When the incident had come out the petitioner had paid the amount for closing the loan. The nature of the evidence given by the other witnesses also is the same. There is no reason to doubt about the credibility of these witnesses. It is very much clear that the petitioner was the one who was stage managing all the loan transactions referred to by the Management in which fake jewels were pledged.

20. The admission made by the petitioner during his cross-examination would show that he as the Cash Officer who had been processing the loans was responsible for testing the quality of the jewels. It has been argued on behalf of the petitioner that the employees were not given any training in the appraisal of jewels. But, there is the

admission made by the petitioner himself that while in Woraiyur Branch he had processed 300 loans and subsequently after he was transferred to Sendurai branch he had processed about 3000 gold loans. So it is clear that he had a lot of experience as Cash Officer and was processing several gold loans. He had admitted during his cross-examination that as a Special Assistant or as Cash Officer his responsibility included testing the quality of the old jewels using touchstone and nitric acid. He has admitted that in Ex.W12 the columns regarding the relevant loans were filled by him as a Cash Officer and he had put his signatures also below them. He has given the difference between the gross weight and net weight representing purity of the jewel. He had admitted that before he records this difference he will be checking the purity of the jewel also. He has stated that he is to certify the gross weight and net weight of the jewel, its valuation, rate, advance value etc. after verification. He has also admitted that in Ex.W12 he has given such declaration and has signed it. He had specifically admitted that all the 10 gold loan accounts in which the gold involved were found spurious were processed by him. In view of this admission made by the petitioner there is no scope for the contention that there was no proper training for the employees in the appraisal of jewels. The petitioner was an experienced Officer who was dealing with the jewels loans for a long time. So he could not have accepted spurious jewels by mistake, out of ignorance. The duty of the Manager is only to sanction the loan based on the processing done and recommendation made by the petitioner. He is not directly involved in the appraisal or the processing.

21. The First Charge against the petitioner is that he had not appraised the quality of the ornaments correctly and had hidden the fact that the ornaments are not gold and had caused sanction of gold loans against spurious ornaments and caused loss of more than Rs. 6,67,000/- to the Bank. This charge against the petitioner is clearly proved in the enquiry proceedings, as discussed above.

22. The Second Charge against the petitioner is that he had failed to observe the KYC norms like ensuring proof of identity, proof of address, etc. of the borrowers and had been thus instrumental in perpetrating the fraud PW1 in the enquiry proceedings who was the Manager at the time of detection of the incident had deposed that the KYC norms were not observed. He had stated that out of 7 gold loan accounts only one was residing at Woraiyur and others were residing elsewhere. In one account there was no photograph also. This evidence of the Manager is not even challenged by the petitioner in the enquiry proceedings. So this charge also has been established.

23. The last charge against the petitioner is that he has sanctioned a gold loan of Rs. 80,000/- to Murugesan against the spurious gold ornaments as benami to Rajesh. Murugesan examined as PW2 in the enquiry proceedings has stated under what circumstances he happened to be a

loan account holder. He has stated that Rs. 15,000/- was due to him from Rajesh. When he pressed for payment, Rajesh had referred to the petitioner as his Uncle and had wanted him to get a jewel loan in his name. He has stated during his examination that Rajesh made him sign some forms and had directed him to leave the Bank. On the basis of the documents containing his signature loan of Rs. 80,000/- seems to have been availed. He had stated that Rajesh had given him Rs. 8,000/- and Ayesha who was his acquaintance had given him the balance amount. When the circumstances are considered there is no reason to suspect the credibility of the evidence given by this witness regarding the circumstances under which he had signed the document. On the basis of the evidence of this witness and other circumstances, the Enquiry Officer has found that Charge No. 3 is also established against the petitioner. I do not find any reason to interfere with this finding also.

24. One argument that has been advanced on behalf the petitioner is that the enquiry has been conducted in violation of Bipartite Settlement. Reference was made to Clause-521(3) of the Bipartite Settlement which states that if after steps have been taken to prosecute an employee or to get him prosecuted for an offence, if he is not put on trial within a year of the commission of the offence, the Management may deal with him as if he had committed an act of gross misconduct or of misconduct as defined in Clause-4. The case of the petitioner is that the enquiry was commenced within a year of the steps taken to prosecute him. The FIR in the case is seen lodged on 06.07.2007. The Charge Sheet in the enquiry is seen issued on 01.03.2008. However, the actual proceedings of enquiry was started later. During enquiry also the petitioner has raised the contention and the enquiry proceedings have been postponed and was continued only after a year of starting the prosecution proceedings. So this argument advanced on behalf of the petitioner also could not be accepted. There is no reason to interfere with the findings of the Enquiry Officer.

25 The petitioner has been dismissed from service consequent to the findings of the enquiring authority when the nature of the misconduct committed by the petitioner is taken into account, I do not think the punishment imposed on him is disproportionate to the gravity of the offence committed. The petitioner has been a responsible officer of the Bank and was expected to protect the interests of the Bank. Rather than doing this, he has been taking advantage of his position to make gain on himself. No lesser punishment would have been sufficient for him. I find that the petitioner is not entitled to any relief claimed by him.

26. Accordingly the reference is answered against the petitioner.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 21st January, 2014)

K.P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined

For the 1st Party/Petitioner: WW1, Sri K. Ravindran
 For the 2nd Party/Management: MW21, Ms. K. Gomathi
 Nayagam

Documents Marked**On the petitioners side**

EX. No.	Date	Description
Ex. W1	19.07.2007	Suspension Order
Ex. W2	26.12.2007	Respondent letter to petitioner
Ex. W3	14.01.2008	Petitioner's letter seeking permission to inspect documents
Ex. W4	25.01.2008	Petitioner's letter seeking permission to inspect documents
Ex. W5	06.02.2008	Reply given by the Respondent
Ex. W6	14.02.2008	Reply by the petitioner to the Charge Memo
Ex. W7	01.03.2008	Charge Sheet
Ex. W8	15.03.2008	Reply of the petitioner to the Charge Sheet
Ex. W9	08.04.2008	Notice of enquiry to the petitioner
Ex. W10	16.05.2008	Notice of Preliminary Enquiry from the respondents
Ex. W11	23.05.2008	Letter from the petitioner to the Respondent
Ex. W12	23.05.2005	Prosecution Exhibits
Ex. W13	23.05.2008 to 02.09.2009	Enquiry proceedings
Ex. W14	22.01.2009	Dismissal order
Ex. W15	07.03.2009	Second Show Cause Notice
Ex. W16	18.03.2009	Reply to the show cause
Ex. W17	23.03.2009	Clarification by the petitioner
Ex. W18	22.05.2009	Second Dismissal order
Ex. W19	01.07.2009	Appeal by petitioner to DGM
Ex. W20	24.10.2009	Reminder by petitioner
Ex. W21	01.02.2010	Notice of personal hearing
Ex. W22	29.05.2010	Order of the Appellate Authority
Ex. W23	-	Bipartite Settlement

On the Management's side

EX. No.	Date	Description
Ex. M1	11.08.2008	Proceedings of Enquiry
Ex. M2	27.08.2008	Proceedings of Enquiry
Ex. M3	08.09.2008	Presenting Officer's brief (Prosecution Brief)
Ex. M4	15.09.2008	Letter from Petitioner acknowledging prosecution brief and requesting time to submit his brief
Ex. M5	11.10.2008	Defence brief
Ex. M6	05.11.2008	Enquiry Officer's report

Ex. M7	06.11.2008	Letter from respondent to petitioner Dis/Con/365 dated 06.11.2008 giving time to submit his reply to the findings of the Enquiry officer
Ex. M8	20.11.2008	Petitioner's letter to AGM/Disciplinary Authority
Ex. M9	28.11.2008	Petitioner's letter to the Asistant General Manager/disciplinary authority to treat his reply dated 20.11.2008 as his comments on the findings of the Enquiry Officer
Ex. M10	18.03.2009	Proceedings of the personal hearing and written representation of petitioner — Ravindran
Ex. M11	22.05.2009	Order of Disciplinary Authority (Dis/Con/048)
Ex. M12	-	Reply of respondent to ALC(C), Chennai in reference to 2(A) petition filed by petitioner before ALC (C)
Ex. M13	18.09.2008	Letter from petitioner to the AGM (Disciplinary Authority), State Bank of India, Z.O. Vellore-1
Ex. M14	04.11.2008	Reply of respondent to the letter of petitioner dated 18.09.2008
Ex. M15	25.07.2007	Final Investigation report by Mr. K. Rangaraj, Dy. Manager, Regional-I, Coimbatore.

नई दिल्ली, 7 फरवरी, 2014

का०आ० 668.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दक्षिण रेलवे प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 25/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 07/02/2014 को प्राप्त हुआ था।

[सं एल-41012/27/2011-आई आर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 7th February, 2014

S.O. 668.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 25//2012) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the industrial dispute between the management of Southern Railway and their workmen, received by the Central Government on 07/02/2014.

[No. L-41012/27/2011-IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI**

Thursday, the 23rd January, 2014

PRESENT: K.P. PRASANNA KUMARI,
Presiding Officer

Industrial Dispute No. 25/2012

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Southern Railway and their workmen)

BETWEEN

Sri K. Sivasankaran : 1st Party/Petitioner

AND

The Divisional Railway : 2nd Party/Respondent
Personnel Officer,
Salem Division,
Southern Railway,
Salem-636005

APPEARANCE:

For the 1st Party/Petitioner: Petitioner himself

For the 2nd Party/

Management : Sri P. Srinivasan, Advocate

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-41012/27/2011-IR(B-I) dated 22.03.2012 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

"Whether the demands mentioned below of Sri K. Sivasankaran, Staff No. J/C 680, Ex-Head Commercial Clerk are legal and justified? To what relief the disputant is entitled?"

Demands of Sri K. Sivasankaran:

- (i) Reinstatement in service with full back wages and other benefits for the period of forced unemployment upto the date of reinstatement with 18% interest per annum and minimum 64 hours night duty allowance per month, (ii) Payment of bonus from the year 2003-04 till date of reinstatement in service with 18% interest per annum, (iii) Payment of packing allowance due from 12.04.1999 with 18% interest, (iv) Payment of annual interest on standing Provident Fund and crediting of monthly subscription towards Provident Fund from the date of its Forfeiture, (v) Restoring of Leave on Average Pay and Half Average Pay standing at his credit on the date on which the Industrial Dispute was raised and addition of such leave on becoming due. Payment of leave salary for the leave which exceeds the maximum limit arid lapsed, (vi) Completion of ACR with Outstanding remarks from the year 2003-04 till date of reinstatement, (vii) Payment of amount which would have become payable to him on the maturity of LIC Policy No. 701126918 by the management, (viii) Payment of First

Class Fare of the longest route from 2 persons (for himself and his widowed mother) for three privilege passes per year 2003 till the date of his reinstatement Payment of 2/3rd of First Class Fare of longest route for 2 persons (himself and his widowed mother) for four sets of Privilege Ticket Orders per year 2003 till date of his reinstatement, (x) Payment of Consolidated amount per year for two persons (himself and his widowed mother) in lieu of Railway medical services from 2003 till the date of his reinstatement, (xi) Promotion of the post of Assistant Commercial Manager on the first post of the Exam for which he was an applicant and was not imparted training in the year 2003.

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 25/2012 and issued notices to both sides. The First Party has entered appearance and conducted the case himself. The Second Party has appeared through counsel. The First Party has filed Claim Statement and the Second Party Counter Statement in answer to this.

3. The averments in the Claim Statement in brief are these :

The First Party had joined the Railways as Commercial Clerk. He was promoted from time to time and was working as Permanent Head Commercial Clerk w.e.f. 01.05.1994. The tenure for Commercial Clerk at one stage was 5 years during that time. Disregarding this policy and in spite of the fact that the First Party had been pursuing his law study in the evening college at Salem with permission, the Second Party had Transferred the First Party to Mettur Dam so that he will not be in a position to continue his studies. On intervention of the Central Administrative Tribunal (CAT), The Second Party had modified the order and transferred the First Party to Salem Junction for a tenure of 8 months so as to complete his study in law with instruction to proceed to Mettur Dam after completion of law course. The First Party had joined Mettur Dam Railway Station on 11.04.1999. By this time the Second Party is said to have modified the tenure of the Commercial Clerk for periodical transfer as 4 years. The First Party was not liable to be transferred on 31.01.2003 the date for registration for transfer or in February 2003, the month of General Transfer or on 21.03.2003, the date of transfer. Still the First Party was ordered to be transferred and the order was kept secret until 27.04.2003 on which date a relieving order was served on the First Party. This order was attempted to be served at the residence of the First Party when he was off duty. The First Party refused to accept it as he was not served with a copy of the transfer order and also because a reasonable time for submission of his grievance on transfer before the concerned authority was not given. The Station Master removed the name of the First Party from the Muster Roll arbitrarily and thus terminated the service of the First Party. The First Party had raised Industrial Dispute before the Labour Enforcement Officer, Salem. The Officer sent a false

report to the Government regarding the dispute. The service of the First Party could be terminated only by an authority equivalent to or above him. The Termination was inflicted by the Station Master who is a subordinate. Before serving relieving order on the First Party a transfer order should have been served on him with reasonable time for redressing his grievance. The First Party is entitled to be reinstated in service with full back wages and also all other benefits shown in the schedule of reference.

4. The Second Party has filed Counter Statement contending as follows:—

The First Party was appointed as Trainee Commercial Clerk in Palghat Division of Southern Railway on 25.09.1985. After completion of the training, he was posted as Relieving (Commercial) Clerk at Salem. He was promoted w.e.f. 12.10.1988 and was retained as Relieving Clerk at Salem. While working here he was awarded the penalty of withholding of annual increment for misconduct. He was later promoted as Head Goods Clerk and was posted to Salem Market Station. While working here he unauthorizedly absented from duty and he was awarded penalty of withholding of increment for 24 months. While working at Salem Market, the First Party had been granted permission to join Law College at Salem. His 3 years Law Degree Course should have been completed in the year 1997. In the year 1998, he was posted to Mettur Dam in the vacancy that has arisen on promotion of the Commercial Clerk there. However, pursuant to the order of Hon'ble CAT, he was retained at Salem Market till 01.04.1999 for completion of his Law Degree Course. Then he was Transferred to Mettur Dam and had joined there on 11.04.1999. In terms of Railway Board's letter dated 27.09.1989, the Commercial Clerk is liable to be transferred every 4 years. The First Party was accordingly included in the periodical transfer order dated 27.03.1998 by which he was transferred from Salem Market to Mettur Dam. His periodical transfer was to be in the year 2002. Since he was retained at Salem Market till 10.04.1999 to enable him to complete his Law Degree Course, the next periodical transfer due for him was in the year 2003. It is accordingly he was transferred from Mettur Dam to Sankari Durg by the transfer order dated 21.03.2003. On the basis of the Transfer Order the Station Master of Mettur Dam under whose control the First Party was working had relieved him to Sankari Durg on 27.04.2003. The Station Master had made entry to this effect against the name of the First Party in the Muster Roll. When the relieving order was served on the First Party, he had retained one copy and had returned the other copy with the endorsement "the relieving order is refused to be accepted for want of copy of transfer order and a reasonable time to submit representation about the injustice caused for me. One copy is retained with me for submission of appeal to the Labour Enforcement Officer (Central), Salem". The periodical transfer order was in respect of 121 employees and was

circulated to entire division through the supervisory officials. The First Party could have obtained the copy of the order from the Station Master or from the Divisional Authorities. The First Party did not join for duty at Sankari Durg. He then made a complaint to the Labour Enforcement Officer, Salem. He made complaints to the Asstt. Labour Commissioner also. The complaint before the Asstt. Labour Commissioner was closed. Since the First Party had not joined duty at Sankari Durg, he is treated as continuing on unauthorized absence from 28.04.2003. The services of the First Party were not terminated so far. He is not entitled to any wages, other attendant benefits or privileges since he has not been performing his duty from 28.04.2003. The First Party is not entitled to any relief.

5. The evidence in the case consists of oral evidence of WW1, MW1 and Exts. W1 to Ex. W22 and Exts. M1 to Ext. M4.

6. The points for consideration are:

- (i) Whether the First Party was terminated from the services of the Second Party?
- (ii) Whether the First Party is entitled to the relief of reinstatement in service and other reliefs detailed in the schedule of reference?

The Points

7. There is no dispute regarding the facts of the case except for the contention of the First Party that his relieving on transfer from Mettur Dam amounts to illegal termination from service, while according to the Second Party, he was not terminated from service, but was only relieved from his post at Mettur Dam to enable him to join Sankari Durg where he was transferred.

8. The First Party had joined in Palghat Division of Southern Railway as Commercial Clerk Subsequently he was promoted and he was working at Salem Market. From there he was Transferred to Mettur Dam. However, he had obtained an order from CAT, Ernakulam against this and on the basis of the order of the Tribunal the Respondent retained him at Salem itself for a period of 8 months so as to complete his Law Degree Course. After he completed the course he was sent to Mettur Dam and had joined there on 11.04.1999. It was from Mettur Dam the First Party was transferred to Sankari Durg. However, he refused to join at Sankari Durg, though he was relieved from Mettur Dam.

9. The justification of the First Party at the time to refuse to join at Sankari Durg was that he was not served with a copy of the transfer order and he was not given sufficient time to seek redressal of his grievance on account of the transfer. The supervising officer at Mettur Dam under whom the First Party was working had served the relieving order at his residence and had struck off his name from the Muster Roll at Mettur Dam after this. The First Party to whom the relieving order was served had retained a copy

of the order and had sent back the other copy with an endorsement that he is refusing to accept the relieving order since he was not served with a copy of the transfer order and he had no sufficient time to challenge the order. The contention of the Second Party is that transfer order is one by which 121 employees were transferred and no individual order was served on them but it was served on them through the supervising officer of the station at which each of them are working. It is not clear whether the intention was that the transfer order should be circulated among the concerned persons or whether a copy should have been served on each one of them. In any case there is no case for the Second Party that a transfer order was directly served on the First Party. At The same time the First Party does not have a case that even though he was not served with a copy of the transfer order he had no knowledge of the order.

10. Though at the time of signing of the Relieving Order the two grievances of the First Party were that he was not given copy of the order and had no time for redressal of the grievances, his present case is that he was prematurely transferred from Mettur Dam to Sankari Durg. He had joined Mettur Dam on 11.04.1999. The order transferring him from Mettur Dam to Sankari Durg is dated 21.03.2003. He was relieved from Mettur Dam on 27.04.2003. The case of the Second Party is that certain categories of employees would be transferred every 4 years and that the First Party who is working as Commercial Clerk is one coming under such category. The case of the First Party seems to be that he has not completed the tenure of 4 years at Mettur Dam by the time, order was passed transferring him to Sankari Durg. If the date of joining of the First Party at Mettur Dam is taken into account this contention will have some force. By 21.03.2003 on which date the transfer order was made 4 years was not completed. It was by Ex.W2(a) dated 27.12.2002 the employees were directed to submit their registration for periodical transfer during February 2003 and this was to be done not later than 31.01.2003. If date of joining and this date of registration is taken into account there were few more months for completing the period of 4 years at Mettur Dam for the First Party.

11. However, the case of the Second Party is that the tenure of an employee in a particular station is to be counted from the date of the order of transfer and not from the date on which the employee had joined at the particular station. As already stated the First Party had obtained an extension of 8 months at Salem to enable his study of law. But for the order of the Administrative Tribunal, consequent to which he was retained at Salem, he should have proceeded to Mettur Dam and joined there on an earlier date. In fact the order of transfer by which the First Party was transferred to Mettur Dam is on 27.03.1998. The copy of this order is marked as Ex.W2(e). Subsequently, by order dated 21.07.1998 the petitioner was retained at the same station

by modification of the previous order with an addenda that he will have to go to Mettur Dam on 01.04.1999. The case of the Second Party seems to be that the transfer order having been made much earlier, but for his retention at Salem consequent to the order of the Administrative Tribunal he would have proceeded to Mettur Dam and joined there in which case he would have completed 4 years long before 21.03.2003, the date on which he was Transferred to Sankari Durg. MW1 examined on behalf of the Second Party has stated that the period of service in a particular station would be counted from the date of the order. However, he has not stated which is the date to be treated as the date of completion of the tenure of 4 years, whether the date of the transfer order or whether the last date on which the employees are directed to submit their registration for periodical transfer. Again the order by which the First Party was sent to Mettur Dam after completion of his period at Salem is not produced by either side. It is not clear whether he was relieved on the basis of the order permitting him to be retained at Salem or by a subsequent order made at the juncture of his completion of the 8 months period for which extension was given.

12. In any case the contention that is advanced by the petitioner that his relieving from his post at Mettur Dam was by an Officer who was not competent to do so and that in any case the said relieving has the effect of his termination from service could not be accepted. Again, merely for the reason that the First Party was given an order of transfer before the tenure of 4 years has not completed (even if this is correct) he need not join the transferred post also could not be accepted. As pointed out by MW1, the Respondent has the power to transfer an employee even before the completion of the prescribed tenure. The tenure prescribed is only a general direction in nature and does not mean an employee under any circumstances could not be transferred before the tenure is completed. The employee is not at liberty to refuse to join the station to which he is transferred on such an excuse also. After the First Party has been relieved from Mettur Dam his name has been struck off from the Muster Roll at Mettur Dam. Since he has not joined at Sankari Durg his name could not be expected to be in the Muster Roll at Sankari Durg. Still the First Party could not be assumed to have been terminated from service consequent to the service of the relieving order on him. So the case of the First Party that he has been terminated from service and therefore is to be reinstated in service could not be accepted.

13. The First Party has disobeyed the transfer order and has refused to join at Sankari Durg. Consequently, he was not getting any salary or any other benefits flowing from his work. The First Party has claimed that he is entitled to back wages and all other benefits detailed in the schedule of reference. Since the First Party has refused to work on his own, he is not entitled to the back wages or other benefits claimed by him.

14. It would have been proper if the First Party had joined at Sankari Durg and had raised his grievances before the authorities rather than absenting himself from duty. His challenge to the transfer under the guise that he was terminated from service could not be at the cost of the Respondent which in effect will be at the cost of the public.

15. I have already found that the relieving of the First Party from Mettur Dam could not be considered as his termination from service. The First Party has assumed the status of an employee terminated from service for raising the dispute under Section-2A of the Industrial Disputes Act. This section can be invoked only when an employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman. The case of the First party seems to be that his case comes under "otherwise terminates". Certainly, relieving from one station could not be taken as termination from service at all. Since the case of the First Party does not come under discharge, dismissal, retrenchment or termination from service otherwise, he was not entitled to raise the dispute at all invoking Section-2A of the Act. So the very dispute raised by him is not maintainable also.

16. In view of my discussion, the First Party is not entitled to any relief. The reference is answered against the First Party.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 23rd January, 2014)

K.P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1st Party/
Petitioner : WW1, Sri K. Sivasankaran

For the 2nd Party/
Management : MW1, Sri K.C. Shivadasan

Documents Marked:

On the petitioner's side

Ex.No.	Date	Description
ExW1		Order of Promotion to Head Goods Clerk dated 13.04.1994
Ex.W2		(a) J/C496/Staff/PGT dated 27.12.2002—for registration
(Series)		(b) MTDM/Transfer/2003/2 dated 27.04.2003—relieving order
		© J/C496/PT/CC dated 01.12.1997- for registration—5 years
		(d) J/C 496/Staff/OL dated 12.02.1993—first transfer order
		(e) J/P 676/II/PT/vol. 3 dated 27.03.1998—first transfer order
		(f) RBE No. 123/2000—periodical transfer circular

Ex.W3

Ex.W4

Ex.W5

Ex.W6

Ex.W7

Ex.W8

Ex.W9

Ex.W10

Ex.W11

Ex.W12

Ex.W13

(g) Page No. 143 & 144 of a book of Railway Establishment Rules

(h) Inspection Notes of SCM/Rates/MAS dated 23.03.2000

(i) Application to Grievance Adalat dated 23.03.2000

Reminder for Call Letter for ACM examination dated 22.06.2004

(a) Letter to Sr. DCM/PGT dated 17.02.1998—regarding first transfer

(b) Letter to DRM/PGT dated 17.06.1998—regarding first Transfer

© J/P OA 460/98 dated 21.07.1998—order of second transfer

(d) Instruction to Candidates for Law Entrance Examination

(e) Call letter from Directorate of Legal Studies

(f) Law Degree Admission List

(g) First Page of Application List

(h) J/P676/II/PT/CCS dated 29 04.1991—transfer order to KRR

(I) RBE No. 336/1985—Posting of SC/ST

(g) RBE No 277/1989—Posting of SC/ST—Harassment

Reminder for ACM Examination dated 19.07.2005

Application for the post of ACM dated 05.01.2002

ZTC/532/LDCE/01-03/SC dated 22.03.2003—Promotional Training

J/P 676/II/PT/CC/Vol. 4 dated 09.07.2003—Registration for

Request Transfers—Completion of 4 years

Copy of Pay slip for the months of July 2003 to September 2003

Copy of Pay slip for the month of April 2008

J/P676/II/PT/CC/VOL.4 dated 21.03.2003-Transfer order to SGE

Copy of Muster Roll

Application for Packing Allowance dated 02.07.1999

Ex.W14	Application for Packing Allowance dated 27.09.1999
Ex.W15	Application for Packing Allowance dated 07.12.1999
Ex.W16	Application for Packing Allowance dated 02.01.2000
Ex.W17	Application for Grievance Adalat dated 23.03.2000
Ex.W18	Copy of letters warranting individual service and Acknowledgement
Ex.W19	Copy of notice to levy damage rent dated 28.07.2004
Ex.W20	Copy of Provident Fund Ledger Account slip dated 31.05.2005
Ex.W21	Copy of Charge Sheet for major penalty dated 27.07.2009
Ex.W22	Copy of Notice for eviction proceedings dated 12.08.2010

On the Management's side

Ex. No.	Date	Description
Ex.M1		Annexure-R-1, RBE 244/1989 dated 27.09.1989
Ex.M2		Annexure-R-2, Office Order No. J/C 6/2003 dated 21.03.2003
Ex.M3		Annexure-R-3, Copy of muster roll for the relevant period of April-May 2003
Ex.M4		Annexure-R-4, Relieving Letter No MTDM/Transfer/2003/2 dated 27.04.2003

नई दिल्ली, 7 फरवरी, 2014

का०आ० 669.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दुर्ग राजनन्दगांव ग्रामीण बैंक प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नागपुर के पंचाट (संदर्भ 37/2008) को प्रकाशित करती है जो केन्द्रीय सरकार को 07/02/2014 को प्राप्त हुआ था।

[सं० एल-12012/71/2008-आईआर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 7th February, 2014

S.O. 669.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 37/2008) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Nagpur as shown

in the Annexure, in the industrial dispute between the management of Durg Rajnandgaon Gramin Bank and their workmen, received by the Central Government on 07/02/2014.

[No. L-12012/71/2008-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE**BEFORE SHRI J. P. CHAND, PRESIDING OFFICER,
CGIT-CUM-LABOUR COURT, NAGPUR****Case No. CGIT/NGP/37/2008**

Date: 06.01.2014.

Party No. 1(a) : The Chairman, Durg Rajnandgaon Gramin Bank, Head Office: Near Mundra Kunj, G.E. Road, Rajnandgaon (Chhatishgarh).

(b) Sr. Manager, Durg Rajnandgaon Gramin Bank, Branch- Kurud Distt. Durg (Chhatishgarh).

Versus

Party No. 2 : Punit Ram Sahu,
Ex. Workman, Durg Rajnandgaon Gramin Bank, EWS 189, Kurud Bhilai Distt. Durg (Chhatishgarh)

AWARD

(Dated: 6th January, 2014)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (H of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Durg Rajnandgaon Gramin Bank and their workman, Shri Punit Ram Sahu, for adjudication, as per letter No, L-12012/71/2008-IR (B-I) dated 30.09.2008, with the following schedule:—

"Whether the action of the management of Durg Rajnandgaon Keshetriya Gramin Bank in terminating services of Shri Punit Ram Sahu, Ex-daily rated workman w.e.f. 14.08.2004 is legal and justified? If not, what relief Sri Punit Ram Sahu is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Punit Ram Sahu, (the workman" in short), filed the statement of claim and the management of Durg Rajnandgaon Keshetriya Gramin Bank ("Party No. 1" in short) filed their written statement.

The case of the workman as presented in the statement of claim is that the party No. 1 is an industry and the provision of the Act and industrial Employment (Standing orders) Act, 1947 are applicable to party No. 1 and party

No. 1 is also registered under the Shops and Establishments Act and he is a workman and he was engaged as daily rated workman as a messenger-cum-sweeper in Kurud Branch of Party No. 1 w.e.f. 15.01.1999 and he worked as such with clean and excellent service record till 14.08.2004, when he was terminated from services without any notice or compensation, as per the provisions of the Act and neither any charge sheet was issued nor any departmental inquiry was held against him, before termination of his services and prior to termination of his services, he had completed more than 240 days of service in every year and he was being paid wages at the rate of Rs. 35/- per day from sundry maintenance and miscellaneous accounts and the documents in that regard are with the party No. 1 and he was working full time and besides cleaning the tables and the floor of the Bank premises, he was also doing clerical work entrusted to him including maintenance of inward and out ward register, bringing wage sheets of Bhilai Steel Plant workers and their demand drafts and preparing of demand notices and as he worked for more than 240 days in a year, prior to his termination, he had acquired the status of a permanent employee as per the Standing Order and he was entitled to be regularized, but party No. 1 orally terminated his services on 14.08.2004, without one month's notice or one month's pay in lieu of the notice or payment of retrenchment compensation and no seniority list was also displayed by party No. 1 and some employees juniors to him were retained in service by party No. 1 and his termination from services was in violation of the provisions of Section 25-F of the Act and he is entitled for reinstatement in service with continuity and full back wages.

3. The party No. 1 in the written statement, denying all the adverse allegations made in the statement of claim, has pleaded *inter alia* that there was never any employer employee relationship between it and the workman and as such no industrial dispute exists and the reference has been made mechanically and without consideration of the relevant materials placed before the authority and the order of reference is not only illegal, bad in law, but also void ab initio and the workman was not appointed by the Bank and therefore, there was no termination as mentioned in the order of reference. It is further pleaded by the party No. 1 that the engagement of the workman if any was not with any recruitment Procedure prescribed for getting employment, hence the workman has no right to claim employment with the Bank and the workman was not engaged as a messenger-cum-sweeper w.e.f. 15.01.1999, but he was engaged for less than two hours for sweeping of the Bank premises and filling drinking water, in absence of the regular sub staff and he was being paid daily wages as and when he was engaged and as there was no appointment, there was no question of his termination as alleged, so the question of issuance of notice or payment of compensation, does not arise and the workman does not work for 240 days in any calendar year and he never

worked full time or performed clerical work and there was no need to maintain any seniority list for the persons engaged on casual basis and juniors were not retained and there was no violation of the provisions of section 25-F of the Act or any law and the provisions of sections 25-F and 25-G of the Act are not applicable to the case of the workman and muster roll, salary sheet and salary register are not maintained for the persons casually engaged as and when required basis and the workman is not entitled to any relief.

4. Both the parties have led oral evidence in support of their respective claim, besides placing reliance on documentary evidence. The workman has examined himself as a witness in support of his, whereas, one Arun Kumar Dubey has been examined as a witness by party No. 1.

5. In his examination in chief, which is on affidavit, the workman has reiterated the facts mentioned in the statement of claim. He has also proved the letters written by the Bank to the Asstt. Manager, Bhilai Steel Plant as Exts. W-I to W-X.

In his cross-examination, the workman has admitted that he was appointed as daily wager by the then Branch Manager of the branch, as the regular messenger was on leave, due to sustaining of injuries and no written appointment order was given to him by the bank and he was being paid wages for the days he was working in a week and the wages was being paid to him on vouchers and he has no document to show that for how many days in a week, he worked with the Bank, during the period of his engagement and while he was working with the Bank, except himself, no other daily wager was engaged by the Bank.

6. The witness for the party No. 1 in his evidence on affidavit has reiterated the facts mentioned in the written statement by party No. 1. In his cross-examination also, this witness has stated that the workman had worked as a daily wager at Kurud branch and he was engaged on daily wages as and when required and wages had been paid to him for the days he worked with the Bank. This witness has further stated that no record regarding payment of wages to the workman is now available with the bank and all expenditures and transactions including payment of wages on vouchers by the bank are entered in the concerned ledgers of the branch of the bank and copy of the ledgers regarding payment of wages to the workman have not been filed by the bank in this case.

7. At the time of argument, it was submitted by the learned advocate for the workman that the workman worked continuously with party no. 1 from 15.01.1999 to 14.08.2004 and he had completed more than 240 days of work before his termination and the party no. 1 terminated his services w.e.f. 14.08.2004, without paying any compensation and there was no compliance of the provisions of section 25-F of the Act. It was further submitted by the learned advocate for the workman that in paragraph 11 of the statement of

claim itself, the workman had demanded for production of documents by the party no.18 and in reply, the party no. 1 stated that the workman was not appointed by following due procedure and inspite of demand made by the workman, party no. 1 failed to produce the documents regarding the appointment of the workman at Kurud branch and from the evidence of the workman, documents produced by him and the admission of the witness for the party no. 1 that the workman was appointed on daily wages, an inference can be safely drawn that the workman had completed 240 days of work in each year and there is no answer as to why the workman was terminated from service without following the procedure.

It was further submitted by the learned advocate for the workman that in view of the judgment of the Hon'ble Apex Court as reported in 2009 III CLR-262 (Maharashtra State Road Transport Corporation Vs. Casteribe Rajya P. Karmachari Sanghatana), the judgment of the Hon'ble Apex Court in the case of Secretary, State of Karnataka and others Vs. Uma Devi and others, 2006 II CLR-261 SC has no application to this case and in view of the series of decisions of the Hon'ble Apex Court as well as Hon'ble Bombay High Court, the Tribunal cannot travel beyond the scope of the reference and as the termination of the workman from services was without compliance of the mandatory provisions of section 25-F of the Act, his termination is illegal and due to illegal termination, he was forced to economical death, as he had no other source of income and the workman is not gainfully employed after his illegal termination and as such, the workman is entitled for reinstatement in service with continuity and full back wages.

It was also submitted by the learned advocate for the workman that juniors to the workman, were employed by party no. 1 in violation of the provisions of section 25-G and 25-H of the Act.

In support of the contentions, the learned advocate for the workman placed reliance in the decisions reported in 2009 III CLR-262 (Supra) and 2011 II CLK-461 (Devinder Singh Vs Municipal Council. Sanaur).

8. Per contra, it was submitted by the learned advocate for party no. 1 that the workman was engaged as a part time casual worker on daily wages basis, as and when required by the branch and his engagement was not in accordance with the recruitment rules of party no. 1 and he was not a workman. It was further submitted by the learned advocate for the party no. 1 that the workman has failed to prove that he worked for 240 days in the preceding 12 calendar months of the alleged date of termination and as such, the provisions of section 25-F are not applicable to his case. It

was also submitted that the workman has also failed to show that juniors to him were retained by party no. 1.

Alternatively, it was submitted that in case of holding of the alleged termination of the workman from services to be illegal by the Tribunal, then also, the workman is not entitled for reinstatement in service or back wages and at best, he can be granted some monetary compensation.

In support of such contention, the learned advocate for the party no. 1 placed reliance on the decisions reported in (2013) 5 SCC-136 (Asstt. Engineer, Rajasthan Development Corporation Vs. Gitam Singh).

9. It is the admitted case of the parties that the workman was engaged on daily wages basis. According to the workman, he was engaged as daily rated workman w.e.f. 15.01.1999 and he worked continuously till 14.08.2004 and he had completed more than 240 days of work in every year and his services were terminated on 14.08.2004 without compliance of the mandatory provisions of section 25-F of the Act.

Party no. 1 has denied such claim of the workman. According to party no 1, the workman was engaged by it intermittently on daily wages as and when required basis and he did not work for 240 days in any year and he did not work continuously from 01.10.1999 to 18.12.2004.

It is well settled that service for 240 days in a period of 12 calendar months is equal not only to service for a year, but is to be deemed continuous service even if interrupted. Therefore, though S.25-F speaks of continuous service for not less than one year under the employer, both conditions are fulfilled, if the workman has actually worked for 240 days during a period of 12 calendar months.

It is also well settled that before a workman can complain of retrenchment being not in consonance with section 25-F of the Act, he has to show that he has been in continuous service for not less than one year under that employer who has retrenched him from service.

In the present case, in order to prove that he worked continuously from 15.01.1999 to 14.08.2004 and completed more than 240 days in every year, the workman has examined himself as a witness and has filed his evidence on affidavit. The workman has also proved the documents, Exes. W-I to W-X, which are letters written to the Asstt. Manager, Bhilai Steel Plant by the Manager of Kurud Branch of Durg—Rajnandgaon Gramin Bank in between 06.01.2003 to 29.04.2004 to hand over the cheques for payment of the monthly wages to the workman.

It is to be mentioned here that the witness for the party no 1 in his cross-examination has stated that all expenditures and transactions including payment of wages

on vouchers by the bank and entered in the concerned ledgers of the branch of the bank and copy of the entries of the ledgers regarding payment of wages to the workman have not been filed by the bank.

It will not be out of place to mention here that though party no. 1 has mentioned in the written statement that the workman was engaged intermittently, it has not mentioned as to for how many days, the workman was engaged during the 12 calendar months preceding the alleged date of termination or the total days of his engagement. No document has also been filed by party no. 1 in regard to the engagement of the workman. The workman had filed an application for filing of original documents in connection with his engagement in the branch till August 2004. The party no. 1 did not file the documents, even though direction was given for production of the documents. An affidavit sworn by the then Branch Manager of Kurud Branch was filed stating that due to shifting of the branch to a new premises, the document could not be made available, it was not denial by the party no. 1 that there were no such documents. Hence, adverse inference is drawn against the party No. 1 for nonproduction of the relevant documents.

It is found from the evidence on record that the workman has been able to show that he had worked for 240 days in the preceding 12 calendar months of the date of the termination i.e. 14.08.2004. It is also admitted that before termination of the services of the workman, the mandatory provision of section 25-F of the Act were not complied with. So, the termination of the services of the workman held to be illegal.

11. Now, the question remains for consideration is as to what relief or reliefs the workman is entitled.

As per the submission of the learned advocate for the workman, the workman is entitled for reinstatement in service with continuity and full back wages. In support of such submission, the learned advocate for the workman placed reliance on the decision reported in 2011 II CLR-461 [Supra].

On the other hand, the learned advocate for the party no. 1 as alternative argument submitted that in this case, the workman is not entitled for reinstatement and back wages and at best, he can be granted monetary compensation and in support of such submission placed reliance on the decision reported in (2013) 5 SCC-136 (Supra).

It is settled beyond doubt that for grant of back wages, it is necessary for the workman to plead and prove that he was not gainfully employed since the date of his termination. In this case, though the workman in his

examination-in-chief has stated that he was not gainfully employed since the date of his termination, in his cross-examination, he has admitted that he is doing business after his disengagement from bank and he is running a fancy store. In view of the admission of the workman of his doing business after his termination, he is not entitled for any back wages,

12. The Hon'ble Apex Court in the decision reported in (2013) 5 SCC-136 (supra) have been pleased to take into consideration a large number of decisions delivered by the Hon'ble Apex Court earlier, including the decisions reported in 2011 II CLR-461 (Devinder Singh Vs. Municipal Council, Sonaur, on which reliance has been placed by the workman), (2010) 3 SCC-192 (Harjinder Singh Vs. Punjab State Warehousing Corporation) and (2010) 9 SCO-126 (Incharge Officer Vs. Shankar Setty.)

The Hon'ble Apex Court have been pleased to hold that:—

"In our view, Harjinder Singh and Devinder Singh do not lay down the proposition that in all cases of wrongful termination, reinstatement must follow. This court found in those cases that judicial discretion exercised by the labour court was disturbed by the High Court on wrong assumption that the initial employment of the employee was illegal. As noted above, with regard to the wrongful termination of a daily wager, who had worked for a short period, this court in long line of cases has held that the award of reinstatement cannot be said to be proper relief and rather award of compensation in such cases would be in consonance with the demand of justice. Before exercising its judicial discretion, the labour court has to keep in view all relevant factors, including the mode and manner of appointment, nature of appointment, length of service, the ground on which the dispute before grant of relief in an industrial dispute.

In the light of the principles enunciated by the Hon'ble Apex Court as mentioned above, now, the present case in hand is to be considered. In this case, it is admitted that the workman was engaged as a daily wager on 15.01.1999. It is also found that he continued as such till 14.08.2004, when he was terminated from services by party no. 1. In a case such as the present one, it appears that the relief of reinstatement cannot be justified and instead monetary compensation would meet the ends of justice. Taking into consideration the facts and circumstance of the case, in my considered opinion, the compensation of Rs. 75,000/- (Rupees Seventy Five thousand only) in lieu of reinstatement shall be appropriate, just and equitable. Hence, it is ordered:—

ORDER

The action of the management of Drug Rajnandgaon Keshetriya Gramin Bank in terminating services of Shri Punit Ram Sahu, Ex-daily rated workman w.e.f. 14.08.2004 is illegal and unjustified. The workman is entitled for monetary compensation of Rs. 75,000/- (Rupees Seventy Five Thousand only) in lieu of reinstatement. He is not entitled for any other relief. The party no. 1 is directed to pay the monetary compensation of Rs. 75,000/- to the workman Shri Punit Ram Sahu within 30 days of the publication of the award in the official gazette failing which, the amount will carry interest at the rate of 6 percent per annum.

J.P. CHAND, Presiding Officer

नई दिल्ली, 7 फरवरी, 2014

का.आ. 670.—औद्योगिक विवाद अधिनियम, 1947 1947 का 14 की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर रेलवे प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चण्डीगढ़ के पंचाट (संदर्भ संख्या 1116/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 07/02/2014 को प्राप्त हुआ था।

[सं. एल-41012/120/2000-आई आर(बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 7th February, 2014

S.O. 670.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 1116/2005) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, No. 2, Chandigarh as shown in the Annexure, in the industrial dispute between the management of Northern Railway and their workmen, received by the Central Government on 07/02/2014.

[No.L-41012/120/2000—IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE**IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH**

Present: Sri Kewal Krishan, Presiding Officer.

Case No. I.D. No. 1116/2005

Registered on 22.9.2005

Sh. Mohinder Singh, S/o Sh. Piara Singh, C/o Sh. Jaspal Singh, Mannipur, Kothi No. 2828, Sector 22C, Chandigarh.

...Petitioner

Versus

The Assistant Personal Officer, Northern Railway, Jagadhari Workshop, Distt. Yamunanagar, Haryana.

...Respondent

APPEARANCES:

For the workman Sh. S.S. Meelu Advocate.

For the Management Sh. N.K. Zakhmi Advocate.

AWARD

(Passed on 7.1.2014)

Central Government vide Notification No. L-41012/120/2000-IR(B.I.) Dated 14.7.2003, by exercising its powers under Section 10 Sub Section (1) Clause (d) and Sub Section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial Dispute for adjudication to this Tribunal:—

"Whether the action of the management of Northern Railway in terminating the services of Sh. Mohinder Singh Chowkidar w.e.f. 1.2.94 is just and legal? If not, what relief the workman is entitled to?"

In response to the notice the workman appeared and submitted statement of claim pleading that he was appointed as Night Chowkidar on 10.3.1981 on daily wage basis. He continuously served up to 31.1.1994 at Railway Workshop Canteen, Jagadhari Workshop, District Yamuna Nagar, Haryana. His services were terminated on 1.2.1994 in violation of the provisions of the Act as no retrenchment compensation was paid to him and no charge-sheet was served on him. That no notice under Section 25F(c) was served on the workman and even no permission of the Government was obtained. That he has been denied the status of temporary employee which is contrary to the instruction mentioned in the Indian Railway Establishment Manual. That the Management adopted unfair practice. That since his termination is illegal, he is entitled to be reinstated in service with all the consequential benefits.

Respondent management filed written statement denying the relationship and pleaded that the workman was never employed and there was no relationship of master and servant between the parties. That Railway Workshop Canteen, Jagadhari Workshop, District Yamuna Nagar, Haryana is an establishment under Section 46 of the Factories Act and all recruitments and appointment of the staff are regulated by the statutory rules. That there are 6216 employees and the provisions of the Staff Canteen is essential to meet out the requirements of the workers which is provided there. That the employees in the canteen are appointed as per the Rules and Regulations. That as per letter dated 1.9.1965 of the management, the employment of casual labour was prohibited and the workman was never

employed by it. It is further pleaded that there is a Railway Protection Force to protect the railway properties and the question that the workman was employed as Night Chowkidar do not arise. Since there is no merit in the claim of the workman, the same be dismissed.

In support of its case the workman appeared in the witness box and examined Dwarka Das. Workman filed his affidavit reiterating the case as stated in the claim petition.

Dwarka Das has deposed that he was working at Railway Workshop, Jagadhari. He has further stated that the workman was recruited in the Canteen in 1981 on the recommendations of the Managing Committee of the Jagadhari Railway Workshop as Chowkidar. He was paid out of the income of the canteen and some of the workers employed in the canteen were appointed to regular posts.

On the other hand the management has examined Sh. P.K. Gupta who filed his affidavit reiterating the case as set out in the written statement.

It was argued by the learned counsel for the workman that workman was recruited by the Canteen Manager on 10.3.1981 and worked there till 31.1.1994 when his services were illegally terminated. In order to support his arguments, the learned counsel has drawn my attention towards the statement of the Dwarka Das, who has stated that the workman was employed in the Canteen and further carried me through the certificate dated 19.8.1998 Exhibit WW1/1, another certificate Exhibit WW1/2 and submitted that the Canteen Manager has issued certificates that workman worked in the Canteen as Night Chowkidar and thus the appointment of the workman as Night Chowkidar in the Canteen Railway Workshop Jagadhari stands proved. He has further relied on **Kerala Electrical & Allied Engg. Company Ltd., Kochi & Anr. Vs. Leemns D'Cruze & Ors. reported in 2008 LAB I.C. 4042** and **Hindalco Industries Ltd. vs. Association of Engineering Workers reported in AIR 2008 SUPREME COURT 1867** to submit that the persons working in the Canteen are Government employees. I have considered the contention of the learned counsel.

In the authorities stated above the workmen were proved to be employees of the Canteen and in those circumstances, it was held that even though the Canteen was run through a contractor but the workmen were the employees of the management. Now it is to be seen whether the workman in the present case is proved to be employee in the Canteen of the Jagadhari Workshop, Jagadhari. No doubt Dwarka Das has stated that workman was employed in the Canteen in March 1981 and that effect is the statement of the workman. There is no denial of the fact that Canteen at Jagadhari Workshop, Yamuna Nagar caters to the demand of the staff and it has to be maintained by the management

under the Factories Act. When the canteen is to be managed by the management, its employees are to be recruited by following the statutory Rules and Regulations. There is nothing on the file that the workman was ever recruited as Night Chowkidar by following any procedure. It was submitted that since the workman worked in the Canteen as Night Chowkidar, the question of any appointment letter do not arise. Even if there is no appointment letter issued, the statutory authorities are required to follow Rules and Regulations for making appointment, but no such procedure has been shown to be followed in the present case and in the absence of this, it cannot be said from the bare statement of the witnesses that the workman was appointed as Night Chowkidar inasmuch as there is a specific averment that the railway property is protected by the Railway Protection Force and there was no need to appoint a Chowkidar. Being so, the statement of witness is of no help to the workman.

So far as certificates Exhibit WW1/1 and WW1/2 issued by the Canteen Manager are concerned, mentioning therein that the workman worked in the Workshop from 10.3.1981 to 31.1.1994, are also of no consequence. The workman has not examined the persons who are the authors of the said certificates and in the absence of their statements, no evidentiary value can be attached to the said certificates. Here, the learned counsel has drawn my attention towards an application and submitted that he summoned the original record of the Canteen Manager along with receipts sent by the workman as well as also the Canteen Managers who issued the certificates, but the same were not produced by the management and therefore adverse inference be drawn against it. Suffice it to say that it was for the workman to produce the witnesses and the management cannot be asked to examine the persons on behalf of the workman. So far as the correspondence Exhibit W2/1 to Exhibit W2/6 is concerned, the same were addressed to the workman authorizing him to sell the canteen items but author of the said documents has not come in the witness box to depose about their authenticity. The workman has also placed photocopies of receipts Exhibit W3/1 to Exhibit W3/8 to prove that he received certain amount for performing the duties. He received Rs. 150/- for the month of July, 1981 at the rate of Rs. 5/- per day and sometimes the receipt shows that he received Rs. 200/-, 250 for performing the night duty but these receipts do not bear the signature of any person of the management and are simply an admission in favour of the workman himself. It cannot be looked into to prove that workman actually worked as Night Chowkidar in the Jagadhari Workshop, Jagadhari.

Thus from the evidence placed on the file it cannot be said that the workman was actually employed as Night

Chowkidar and he worked as such during the period in question. Being so, it is held that his services were terminated.

In result the reference is answered against the workman. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 7 फरवरी, 2014

का०आ० 671.—औद्योगिक विवाद अधिनियम, 1947 1947 का 14 की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक आफ मैसूर के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण बंगलोर के पंचाट (संदर्भ संख्या 09/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 07/02/2014 को प्राप्त हुआ था।

[सं. एल-12012/172/2004-आई आर(बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 7th February, 2014

S.O. 671.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 09/2005) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the industrial dispute between the management of State Bank of Mysore and their workmen, received by the Central Government on 07/02/2014.

[No. L-12012/172/2004-IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT

"Shram Sadan", G.G. Palya, Tumkur Road, Yeswanthpur,
Bangalore-560 022.

Dated : 3rd January 2014

Present : **Shri S N Navalgund**
President Officer

CR No. 09/2005

I Party

Sh. Shivananda,
C/o Gangadharaiah,
No. 32, 12th Cross,
Vijayanagar Pipeline,
Vijaynagar,
Bangalore-560 023.

II Party

The General Manager (HRD),
State Bank of Mysore,
Head Officer. VII Floor,
K G Road,
Bangalore-560 009.

APPEARANCES:

I Party : Shri D Leelakrishnan,
Advocate

II Party : Shri R Narayana,
Advocate

AWARD

1. The Central Government vide order No. L-12012/172/2004-IR(B-I) dated 29.12.2004 in exercise of the power conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) made this reference for adjudication with the following schedule:

SCHEDULE

"Whether the management of State Bank of Mysore is justified in terminating the services of Sh. Shivananda, Temporary Sub-Staff with effect from 4.10.1998? If not what relief the workman is entitled to and from which date?"

2. On receipt of the reference registering it in C R 09/2005 when notices were issued to both the sides the I party filed his claim statement on 01.08.2005, whereas, the II Party filed his counter statement on 19.12.2005.

3. The I Party in his claim statement asserts that he worked as Temporary Sub-staff in the II Party's Basappa Circle, Tata Silk Farm, Sampangiramnagar, BTM layout Branches of Bangalore intermittently from march 1993 till October 1998 and that in between November 1997 to October 1998 he had continuously worked more than 240 days in Tata Silk Farm, Sampangiramnagar, Kanakapura Road and BTM Layout branches of the II Party bank and as per the procedure of the Bank of the Temporary Employees serving more than 240 days in a 12 months period were being entitle to be confirmed the II Party bank had as confirmed the services of many of such employees he too through the General Secretary of SBM Employees Union got addressed two letters dated 24.09.1999 and 27.06.2000 to the General Manager (O) of the II Party Bank requesting for his permanent appointment and in that regard the Manager of Sampangiramnagar Branch had also written letter on 02.02.2000 to the AGM, Bangalore to appoint to appoint him but the same was not considered and in the meanwhile on 04.09.1998 while he was working at BTM Layout branch he was informed that he cannot continued in service as per the instruction and direction of the Head Office and despite his efforts to persuade the said Branch Manager to continue him in service the same since went in vain it amounts to retrenchment within the meaning of Section 2(oo) of the ID Act and as the management has not complied with the mandatory provisions 25(f) and 25(b) of the ID Act its action is Void Abinitio. As such being aggrieved by such high ended vindictive and arbitrary action of the II Party he was constrained the raise dispute

before the ALC(C), Bangalore under Section 2(a) read with Section 10 of the ID Act and due to adamant and unhelpful attitude of the management the conciliation since failed it resulted in this reference. Interlia, the II Party in its counter statement contended that the I Party who intermittently worked as a temporary employee in its different branches had not completed 240 days in any block of 12 months and that he is put to strict proof having put in continuously 240 days of service in any block. It is further contended that there is no provision or rule for a regularisation of any temporary employee putting continuous service of 240 days in any block of 12 months but they were required to forward the application for regular employment in the bank and if after interview they are selected they are selected against permanent vacancies and service of 240 days in a block of 12 months do not automatically make a temporary employee a permanent employee in the Bank. Hence, the I party is not entitle for any of the relief.

4. After completion of the pleadings when the matter was posted for evidence the learned advocate appearing for the II party while filling the affidavit of Sh. M S Shashi Kumar, Deputy Manager, Region-I of II Party Bank got exhibited by consent four certificates issued by the Branch Manager, Tata Silk Farm Branch as Ex M-1 series, certificate issued by Branch manager of Sampangiramnagar branch, certificate issued by Kanakpura Road Branch and BTM Layout Branch as Ex M-2 to Ex M-4 respectively and closed his side. Inter alia, the learned advocate appearing for the I party while filing the affidavit of I Party swearing to the contents of the claim statement examining him an oath as WW 1 got exhibited information furnished to him by CPIO of the II Party on his application under Right to Information Act; copy of circular dated 85 dated 25.08.2009 containing of 228 workers who have been absorbed in the year 2009 and certificates issued by the branch managers of Basappa, Circle, Tata Silk Farm Branch, Hanumanthanagar Branch, HMT Industrial Estate Branch, Sampangiramnagar Branch, Kanakapura Road Branch and BTM Layout branch regarding the details of the Days he worked in those respective branches as Ex W-2, Ex W-3 and Ex W-4 series respectively and during the cross-examinaation of MW 1 had got exhibited copies of two representations of the union to the management and a letter by the Sampangiramnagar Branch Manager to the Assistant General Manager of II Party to make the I party permanent in the job as Ex W-4 series.

5. With the above pleadings and evidence brought on record by both the sides when the matter was posted for arguments the learned advocate appearing for the I party filed his written arguments whereas the learned advocate

appearing for the II Party addressed his oral arguments and cited the following citations:

1. AIR 2001 SC 69 = 2001 (1) SCC 424—Management of M/s. Indian Iron & Steel Co. Ltd., vs. Prahalad Singh

2. AIR 2000 SC 839—Nedugundi Bank Limited vs. K P Madhavankutty & others

3. AIR 1993 SC 2276 = 1993 II LLJ 676 (SC)—Ratan Chandra Sammantha vs. Union of India

4. 2002 II LLJ 297 (Kar)—North West Karnataka Road Transport Corporation, Hubli Vs. Abdul Salam

5. 1999 I LLJ 1028 (SC)—Municipal Committee, Tauru vs. Harpal Singh and Another

6. AIR 2006 SC 1806 = 2006 SC Cases (Vol. 4),—Secretary, State of Karnataka vs. Umadevi

7. 1987 I LLJ 545 (SC) Union of India & others vs. N Hargopal & others

8. 1997 FJR (Vol. 90) 332 (SC) = AIR 1997 SC 1788—State of Haryana & others vs. Jasmer Singh & others

9. 2002 (3) SCC 25 = JT 2002 (2) SC 238—The Range Forest Officer vs. S T Hadimani

10. 2004 (vol-107) FJR 264 (SC)—Rajasthan State Mills vs. State of Rajasthan

11. AIR 2004 SC 4681—Municipal Corporation, Faridabad vs. Siri Niwas

12. 2004 (8) SCC 246 = 2004 LAB IC 4041 (SC)—MP Electricity Board vs. Hariram

13. AIR 1997 SC 3657—Himanshu Kumar Vidyarthi & others vs. State of Bihar & others

6. At the Outset since the schedule of reference is as to whether the management of State Bank of Mysore is justified in terminating the services of Sh. Shivananda, Temporary Sub-Staff with effect from 4.10.1998, I may say that there is no scope to consider the claim of the I Party for confirmation or permanancy of his job and I am required to consider only whether II Party is justified in terminating his temporary sub-staff service w.e.f. 04.10.1998.

7. There being no dispute the I Party having intermittently worked as Temporary Sub-staff in different branches of the II Party namely Dasappa Circle, Tata Silk Farm, Sampangiramnagar, Kanapura Road and BTM Layout Branches between 1993 to 1998 in respect of which the Branch manager of those branches have issued certificates produced at Ex W-1 to Ex W-4 and as temporary sub-staff working continuously 240 days in a calendar year confers with a

right under Section 25(f) of the I.D. Act for one months notice in writing indicating the reasons for retrenchment or wages in lieu of notice period and compensation equivalent to 15 days average pay for every completed year of service or any part thereof in excess of six months as condition precedent before retrenchment, it has to be seen whether 1 Party proved having served for a period of 240 days in any period of 12 months before he was refused work. According to the 1 Party and the certificates he rely upon produced at Ex W-4 series he worked for two days i.e. 27.03.1993 and 27.04.1993 at Basappa Circle Branch; between August 1993 to 28.11.1997 for a period of 254 days at Tata Silk Branch; 88 days at Hamumanthnagar Branch between 03.03.1997 to 10.06.1997; 18 days at HMT Industrial Estate Branch in the month of August 1997; 88 days at Sampangiramnagar Branch between December 1997 to February 1998; 47 days at Kanakpura Branch between 06.05.1997 to 30.06.1998; 93 days at BTM Layout Branch between July 1998 to October 1998. Out of this service he claims that in a block period of 12 months covering November 1997 to October 1998 having worked more than 240 days and this is supported by the certificates produced at Ex W-4 series because they indicate he having worked from 01.11.1997 to 28.11.1997 for 20 days at Tata Silk Farm Branch; during December 1997 to February 1998 for a period of 88 days at Sampangiramnagar Branch; from 06.05.1998 to 30.06.1998 for a period of 47 days at Kanakapura Road Branch; from 09.07.1998 to 27.10.1998 for a period of 93 days at BTML Layout Branch total of which comes to 248 days. Therefore, he has successfully demonstrated having served for more than 240 days in a block period of 12 months covering from November 1997 to October 1998. When he is succeeded in demonstrating that during a period of 12 months i.e., between November 1997 to October 1998 he has served for more than 240 days the II Party/employer could not have terminated his service without giving him either one month's notice or one month's wages in lieu of such notice and compensation equivalent to 15 days average pay for every completed year of service as made mandatory/condition precedent under Section 25(f) of I.D. Act. Admittedly, the II party/employer having not issued one month's notice or one month's wages in lieu of one month's notice and compensation equivalent to 15 days average pay for every completed year of service it amounts to retrenchment in violation of provisions of Section 25(f) and is void abinito and he is presumed to be in service as temporary sub-staff.

8. The learned advocate appearing for the II Party while replying on the claim of the I Party that he was refused work on 04.11.1998 and this reference is made in the year 2005 urged that there being a seven years delay in raising the dispute it is stale claim and is liable to be rejected on this count only and in support of this arguments he cited the decisions reported in.

1. AIR 2001 SC 69 = 2000 (1) SCC 424 - Management of M/s. Indian Iron & Steel Co. Ltd. vs. Prahalad Singh.

2. AIR 2000 SC 839 - Nedugundi Bank Limited vs. K.P. Madhavankutty & Others.

3. AIR 1993 SC 2276 = 1993 II LLJ 676 (SC) - Ratan Chandra Sammantha vs. Union of India.

4. 2002 II LLJ 297 (Kar) - North West Karnataka Road Transport Corporation, Hubli vs. Abdul Salam.

9. I have gone through these decisions carefully but only because there is some delay it cannot be straight away decided that it is stale matter. In the present case on his alleged retrenchment he got made representations through the Union and when it was not materialized he approached the ALC(C) for conciliation and on its failure it ended in making this reference in the year 2005. It is indicated from the details given in the reference was raised before the ALC(C), Bangalore in the year 2003 and FOC report was given on 06.04.2004, therefore, I am not inclined to accept the argument of the learned advocate appearing for the II party this dispute being stale one. Moreover, the II Party in its counter statement having not raised such contention, as held in the case of Municipal Committee, Tauru vs. Harpal Singh and Another reported in 1999 ILLJ 1028 SC relied upon by him only wherein it is held evidence tendered in court should be based on claim statement such contention/arguments cannot be urged. In other words there being no plea in the counter statement the dispute being stale due to delay in raising the dispute the learned advocate appearing for the II party cannot put forward such arguments for the first time during the course of arguments.

10. In the upshot of the above since there being refusal of work to the I Party who was working as Temporary Sub-staff since 1993 intermittently and had during the 12 months block period between November 1997 to October 1998 had worked for 240 days it amounts to illegal retrenchment violation of the provisions of Section 25(f) of I.D. Act he is deemed to be in service as temporary sub-staff he is entitle for an order to restore his name in the panel of temporary sub-staff but having regard to the nature of his engagement as temporary sub-staff in the place of leave vacancy or exigencies of work load and some delay in approaching the ALC(C) for conciliation it is not a fit case to award or grant in his favour any backwages. In the result, I pass the following :

ORDER

The reference is allowed holding that the management of SBM is not justified in terminating the services of Sh. Shivananda, Temporary Sub-Staff with effect from 04.11.1998 and that he is entitle for restoration of his name in the panel of the sub-staff.

(Dictated to UDC, transcribed by him, corrected and signed by me on 3rd January, 2014).

S. N. NAVALGUND, Presiding Officer

नई दिल्ली, 7 फरवरी, 2014

का.आ. 672.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कोनाकन रेलवे कारपोरेशन लि. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, बंगलोर के पंचाट (संदर्भ संख्या 27/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 07/02/2014 को प्राप्त हुआ था।

[सं एल-41012/10/2000-आई आर(बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 7th February, 2014

S.O. 672.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 27/2000) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the industrial dispute between the management of Konkan Railway Corporation Ltd. and their workmen, received by the Central Government on 07/02/2014.

[No. L-41012/10/2000-IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, YESWANTHPUR, BANGALORE

Dated : 10th January, 2014
PRESENT : Shri S. N. NAVALGUND,
Presiding Officer

C R No. 27/2000

I Party	II Party
Shri Santosh Durga Naik, Near Panchapuruha Temple, Keshava Ni Naik Wada, Kodibag, KARWAR.	The Regional Railway Manager, Konkan Railway Corporation Limited, Regional Office, Shirwad, KARWAR - 581 306.

Appearances

I Party	: Shri V. S. Naik, Advocate
II Party	: Smt. Shwetha Anand, Advocate

AWARD

1. The Central Government vide order No. L-41012/10/2000-IR (B-I) dated 16.03.2000 in exercise of the power conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) made this reference for adjudication with the following schedule:

SCHEDULE

"Whether the action of the management of Konkan Railway Corporation Ltd. is justified in refusing reinstatement of Sri Santosh Durga Naik, Ex-Khalasi/Helper in service with all backwages? If not to what relief the said workman is entitled?"

2. On receipt of the reference while registering it in CR 27/2000 when notices were issued both side they entered their appearance through their respective advocates and the claim statement of the I Party came to be filed on 17.01.2002 and counter statement of II Party on 22.06.2002.

3. The I party in his claim statement claims that he was engaged by the II Party as Helper from 08.05.1991 and since then he worked continuously till 01.07.1992 and that from 01.07.1992 he was refused work without complying the provisions of Section 25(f) of ID Act. He has further alleged that along with him several other workmen including Sh. Rajesh V. Tamse, Sh. Kishor G Naik, Sh. Mahadev Naik, Sh. Sadanand S. Naik, Sh. Chandrakant Bhovi, Sh Ullas D Kankarkat, Sh. Lavu R Kankankar and Sh. Telu Naik were also working and those eight workmen have been extended the benefit of regularisation, hence, the action of the management relating to him is totally arbitrary, unjust and mandatory provisions in violation of Section 25(f) of ID Act. He has further alleged that after he was refused employment several times he approached the management and made several representations and got issued notice on 15.09.1997 to which the II Party since did not respond, he filed a petition before the conciliation officer and as he submitted FOC it resulted in this reference. Thus he has asserted that though he has worked continuously for more than 240 days from 08.05.1991 till 01.07.1992 being refused employment from 01.07.1992 without complying mandatory requirement of Section 25(f) of ID Act the II party is liable to reinstate him with continuity of service and all other consequential benefits. In the Counter statement filed by the II party, inter alia, it is contended, it being a company incorporated under the Companies Act, 1956 had undertaken a project of construction of 760 Kms. of Railway Line on the West Coast connecting the western parts of India with an intention to shorten the Railway Routes and in that process it had availed the services of the Staffs of the Indian Railways either by way of deputation or they were re-employed subsequently and having regard to the exigency locally available unskilled labourers were engaged for few days on daily wage basis depending upon day

today requirements and accordingly its Junior Engineer had engaged the I party for few days during the Survey Works on payment of Rs. 30.00 per day from the contingency fund of Chief Engineer, Karwar. It is further alleged that in case of employment of daily rated employees it follows the procedure for appointment through its Chief Engineer and on behalf of its Managing Director and after six months of employing such the employees will be brought on record as temporary employees and subsequently based on the satisfactory performance regular pay scale will be extended subject to the acquisition of the required qualification and as in the case of I Party he was not appointed through such procedure his claim that he was engaged and he served continuously for more than 240 days between 08.05.1991 till 01.07.1992 is false and that he is not entitled to be considered for reinstatement or regular appointment. It is further contended that the I Party was being engaged on Daily Wage of Rs. 30.00 per day for a temporary requirement of the work exigency for few days namely 01.06.1991, 02.06.1991, 06.06.1991 and 08.06.1991 only as such he is not entitle for either for reinstatement or any of the relief he has asked for.

4. After completion of the pleadings when the matter was posted for Evidence on behalf of the II Party while filing the affidavit of Personnel Inspector of the II Party corporation by name Sh. M. S. Patil reiterating the contents of the counter statement examining him on oath as MW 1 the vouchers given by the I Party acknowledging the Receipt of Wages dated 16.09.1991, 19.08.1991; Photostat copy of the Certificate given by its Junior Engineer dated 03.02.1999 I party having worked between 08.05.1991 to 30.06.1992 which they claimed as wrong one; the Memorandum of charges issued to Junior Engineer Chandrakant Pednekar for having wrongfully issuing the certificate dated 03.02.1999 in favour of I Party; copy of explanation given by Sh. Chandrakant Pednekar to the Memorandum of charges dated 06.06.2001; Order passed on the said memorandum of charges imposing Penalty of withholding of one set of privilege pass for the year 2001 dated 07.07.2001; Printed Appendix IX regarding period for which the Records in Account Offices are to be retained; Printed Appendix XIII relating to destruction of Office Records connected with Accounts as Ex M-1 to Ex M-8 respectively. Inter alia, the learned advocate appearing for the I Party while filing the affidavit of the I Party reiterating the averments made in the claim statement examining him on oath as WW 1 got exhibited the Original certificate issued by Junior Engineer, Chandrakant Pednekar dated 03.02.1999 certifying he having worked as Khalasi/Helper during Survey works @ Rs. 30.00 per day exclusive of Sunday from 08.05.1991 to 30.06.1992 and copy of a representation purported to have been given to the II Party on 17.10.1998 not supported by any evidence having served the same on the II Party as Ex W-1 and Ex W-2 respectively.

5. With the above pleadings and evidence brought on record by both the sides, I have heard the arguments addressed by learned advocates appearing for both sides. The learned advocate appearing for the I Party in support of his case cited the decisions reported in

1. 2010 III LLJ Page No. 41 (SC) - Anoop Sharma vs. Executive Engineer, Public Health Div., No. 1, Panipat (Haryana)
2. 2010 II LLJ Page No. 309 - Harijinder Singh vs. Punjab State Warehousing Corporation
3. 1990 (2) LLJ Page No. 70 - Punjab Land Devpt. & Reclaimantion Corpn. Ltd., Chandigarh vs. Presiding Officer, Labour Court Chandigarh & others
4. 2011 III LLJ Page No. 1 - Devinder Singh vs. Municipal Council, Sananur

whereas the learned advocate appearing for the II Party cited the decisions reported in

1. 2007 AIR SCW 7305 - Uttaranchal Forest Development Corporation vs. MC Joshi
2. (2010) 6 SC 773 - Sr. Supdt. Telegraph (traffic), Bhopal vs. Santhosh Kumar Seal and others
3. ARI 2009 SC 3004 - Jagbir Singh vs. Haryana State Agriculture Marketing Board & Anr.
4. AIR 2006 SC 2682 - Chief Engineer, Ranjit Sagar Dam & Anr. Vs. Sham Lal
5. (2000) 2 SCC 455 - Nedungadi Bank Ltd vs. K P Madhavankutty & Ors.
6. (2006) 5 SCC 481 - Asst. Engineer, CAD, Kota vs. Dhan Kunwar
7. (2005) 5 SCC 91 - Haryana State Boop. Land Development Bank vs. Neelam
8. (2004) 8 SCC 262 - Executive Engineer, ZP Engg. Divn. & another vs. Digambara Rao and others
9. Civil Appeal no. 8550/2010 - Chief Engineer & ors. Vs. Sri Puttaraju
10. W P No. 1235/2007 - Cauvery Neeravari Nigam vs. Honnagiri Gowda
11. W P No. 7914/2008 - Cauvery Neeravari Nigam vs. Channakeshava

6. Having regard to the reference schedule and the pleadings of the Parties, the points that arise for my consideration are:

Point No. 1: Whether I Party proved having worked as Helper of the II Party continuously from 08.05.1991 till 01.07.1992 the date on which he was allegedly refused employment and thereby the II Party violated the provisions of Section 25 (f) of the ID Act.

Point No. 2: What order/award?

7. On appreciation of the pleadings, oral and documentary evidence brought on record by both the sides, in the light of the arguments addressed by the learned advocates, my finding on Point No. 1 is in the Negative and Point No. 2 as per final order for the following.

REASONS

8. The I Party in support of his case places heavy reliance on a certificate issued by Junior Engineer of the II Party namely Sh. Chandrashekar Pednaker produced at Ex W-1 dated 03.02.1999. It is evident from the documentary evidence produced by the II Party at Ex M-4 to Ex M-6 that in that regard i.e. for having issued such a certificate he was charge sheeted for misconduct and on his reply he having been punished with penalty of withholding of one set of privilege pass for the year 2001 such a certificate not supported or corroborated by any evidence the I Party having worked continuously from 08.05.1999 to 01.07.1992 the date on which he was allegedly refused employment cannot be believed. Moreover, if at all the II Party had availed his services continuously from 08.05.1991 till 30.06.1992 and abruptly on 01.07.1992 refused him work he would not have kept quite over a period of 7 years i.e. till 1999 in which year he approached the Assistant Labour Commissioner, Bangalore for conciliation. This aspect of delay in raising the dispute suggest that the alleged date of refusal of work i.e., 01.07.1992 is imaginary and fictitious and it also probabilizes the defence of the II Party that due to such delay it could not produce some of the documents asked for by the I Party. Under the circumstances, I have arrived at conclusion of answering the Point No. 1 in the Negative and pass the following :

ORDER

The reference is rejected holding that the action of the management of Konkan Railway Corporation Limited is justified in removing reinstatement S D Naik in service and that he is not entitle for any relief.

S. N. NAVALGUND, Presiding Officer

नई दिल्ली, 7 फरवरी, 2014

का०आ० 673.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक आफ मैसूर के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बंगलोर के पंचाट (संदर्भ संख्या 12/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 07/02/2014 को प्राप्त हुआ था।

[सं० एल-12012/248/2003-आई आर (बी-1)]
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 7th February, 2014

S.O. 673.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby published the Award (Ref. No. 12/2004) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the industrial dispute between the management of State Bank of Mysore and their workmen, received by the Central Government on 07/02/2014.

[No. L-12012/248/2003-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
BANGALORE—560022**

Dated : 8th January, 2014

Present : Shri S. N. Navalgund,
Presiding Officer

C R No. 12/2004**I Party**

Sh. Bajappa,
S/o Shri Chikka Hemana,
Goripalya, Behind Taluk
Office,
Devanahalli, B'lore Rural
Dist. Bangalore.

II Party

The General Manager (P),
IR Dept., State Bank of
Mysore,
Head Office, VII Floor,
K. G. Road,
Bangalore—560009

Appearances :

I Party : Shri M Rajashekar
Advocate

II Party : Shri R Narayana
Advocate

AWARD

1. The Central Government *vide* Order No. L-12012/248/2003-IR(B-I) dated 10-03-2004 in exercise of the power conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) made this reference for adjudication with the following schedule:

SCHEDULE

"Whether the action of the management of State Bank of Mysore is justified in dismissing the services of Shri Bajjappa, Ex-Clerk, Devanahalli Branch with effect from 05.08.2001? If not, what relief the workman is entitled to?"

2. On receipt of the reference while registering it in CR 12/2004 when notice were issued to both the sides they entered their appearance through their respective advocates

and I party filed his claim statement 24.06.2004, whereas, the counter statement of the II party on 24.09.2004.

3. After completion of the pleadings my learned predecessor though there was no assertion or allegation in the claim statement the Domestic Enquiry held against him being not fair and proper had formulated a Preliminary Issue as to Whether the Domestic Enquiry held against the I Party by the II Party is fair and proper. In order to substantiate the said issue on behalf of the II Party while examining the Enquiry Officer got exhibited Charge Sheet issued to the I Party dated 02.02.2000; Notice of enquiry issued by the Enquiry Officer to the I Party dated 15.11.2001; enquiry proceedings; enquiry report submitted by the Enquiry Officer dated 19.03.2002 as Ex M-1 to Ex M-4 and *inter alia*, the I Party by filling his affidavit examined himself and did not produce any documentary evidence. On the said evidence while hearing the arguments addressed by learned advocates for both sides by order dated 24.01.2011 the said issue being answered in affirmative *i.e.*, the Domestic Enquiry held against the I Party by the II Party being fair and proper, the only points that now remains for my consideration are:

Point No. 1: Whether the finding of the Enquiry Officer is perverse necessitating the interference of this tribunal?

Point No. 2: If not whether the punishment of Dismissal of I Party from the service imposed by the Disciplinary Authority and affirmed by the Appellate Authority is disproportionate?

Point No. 3: What Order/Award?

4. The brief facts leading to this reference and award may be stated as under:

5. The I Party while working as Clerk in Devanahalli Branch was served with charge sheet dated 02.02.2000 as under:

" It is reported against you that while working as a clerk at Devanahalli Branch from 18/10/96, you have by abuse of your official position the following dishonest acts alleged to have been committed by you for making wrongful gains to the extent of Rs. 20,000/- (Rupees twenty thousand only). The fraudulent/dishonest acts committed by you are furnished hereunder.

Charge—I

You have on 27.11.1999 in the SB A/s. No. 110 of Smt. Narayanamma alleged to have committed the acts detailed hereunder.

- (i) You have issued Token No. 13 in respect of the withdrawal form dated 27.11.1999 for Rs. 20,000/- pertaining to the SB A/c 110 of Smt. Narayanamma.

- (ii) You have posted a SB withdrawal from on 27.11.1999 for Rs. 20,000/- in the SB A/c No. 110 of Smt. Narayanamma even though a cautious pencil note had been made in the ledger reading as "No drawings obtain L.C."
- (iii) You have attested the L.T.M. on the withdrawal form of Rs. 20,000/- DT 27.11.99 pertaining to SB A/c 110 of Smt. Narayanamma inspite of vast variation in the LTM appearing on withdrawal form when compared with LTM appearing on the SB A/c opening form of Smt. Narayanamma.
- (iv) You have passed the withdrawal form of Rs. 20,000/- pertaining to the SB A/c 110 of Smt. Narayanamma on 27.11.1999 and have recorded the debit entry of Rs. 20,000/- in the payment scroll under serial No. 7.
- (v) You have entered the debit entry of Rs. 20,000/- pertaining to the SB A/c. 110 of Smt. Narayanamma on 27.11.1999 in the control sheet of the ledger and you have also checked the concerned ledger in which the amount of Rs. 20,000/- has been withdrawn from the SB A/c No. 110 of Smt. Narayanamma on 27.11. 1999.

Charge—II

On 14.01.2000, you have tendered cash of Rs. 20,000/- for credit of SB A/c No. 110 of Smt. Narayanamma.

2. The above charges if established amount to gross misconduct in terms of clause 19.5 (j) of the Bi-partite Settlement and you are deemed to have lost the confidence that the bank had reposed on you.

3. You are hereby required to submit your replies if any, on the alleged charges levelled against you within 15 days of the receipt of this charge sheet failing which it will be deemed that you have no reply to submit and the matter will be dealt without reference to you, in case the reply submitted by you is not satisfactory/acceptable, further proceedings will be initiated.

Disciplinary Authority

Asst. General Manager, Region III, B.Z"

6. It appears since no reply or explanation was given by the CSE/I Party to the said charge sheet the Disciplinary Authority ordered to hold the Domestic Enquiry appointing Sh. S P Suresh, Deputy Manager as Enquiry and Sh. C.N. Shankar, Manager as Presenting Officer and then the Enquiry Officer securing the presence of the CSE and allowing him to avail the service of a Defence Representative observing the formalities of preliminary hearing while recording the evidence of Nagappa the then Branch Manager of ADB, Mandya, P G Manjunath, Deputy Manager, Devanahalli Branch and Varadaraju, CGK, Devanahalli Branch as BWs 1 to 3 respectively an exhibiting SB Account opening form No. 110 of Narayanamma; SB

Withdrawal dated 27.11.1999 account 110 of Narayanamma; Ledger Sheet of SB Account No. 110 of Narayanamma; Progressive cum long book of Pension ledger; Special Assistant Payment passions scroll dated 27.11.1999; Death Certificate dated 23.02.1994 of Narayanamma; Branch Letter No. BR/GEN/010 dated 12.1.2000 to AGM; SB passing slip dated 14.1.2000 for Rs. 20000/-; letter dated 14.1.2000 No. ESTT/011 of AGM to the Branch as BEx-1 to BEx-9 after affording opportunity to file the written brief submitted his finding dated 19.03.2002 the charges being proved. Then the Disciplinary Authority enclosing the copy of the enquiry issued second show cause notice to the CSE/I Party and after affording opportunity of hearing by his order dated 05.08.2002 imposed the punishment of dismissal from service and on the appeal preferred by the I Party before the Appellate Authority after affording opportunity of hearing the punishment imposed by the Disciplinary Authority when came to be confirmed and the conciliation proceedings initiated by the I Party failed it resulted in this reference.

7. The I Party in his claim statement claims that the management though kept behind the payment cashier Sh. T V G Ghorpade, Teller Officiating and no evidence was placed by the management he having actually received cash of Rs. 20,000/- in question the Enquiry Officer presuming he had made entries and issued the token erroneously holding the charges levelled against him as proved is perverse and not sustainable asserted that the Disciplinary Authority and Appellate Authority erred in relying on such an enquiry finding to impose on him the punishment of dismissal from service prayed for quashing the dismissal order and to direct the II Party to reinstate him in service with continuity of service and to pay back wages and all other consequential benefits. Inter alia, in the counter statement filed for the II Party it is contended that ample evidence being placed on record to prove his I Party involvement in withdrawing Rs. 20,000/- from the SB account of Smt. Narayanamma on 27.11.1999 who was not alive as on that day and when the same was detected he remitted the same to her account, the Enquiry Officer rightly held him guilty of the charges and as his reply/explanation to the enquiry finding was unacceptable the Disciplinary Authority imposed the punishment of dismissal and same has been upheld by the Appellate Authority giving cogent reasons as such there is no necessity of this tribunal to make interference either in the enquiry finding or the punishment imposed. With these assertions prayed for rejection of the reference.

8. During the course of arguments the learned advocate appearing for the I Party rest contended by urging that Sh. T V G Ghorpade, Payment Cashier who was only competent to depose to whom payment in question was made being not examined in the Domestic Enquiry the finding of Enquiry Officer charge being proved is not sustainable. Inter alia, the learned advocate appearing for

the II Party while submitting that the fact as on 27.11.1999 Smt. Narayanamma, SB Account Holder No. 110 was no more alive and I Party has attested the LTM appearing on withdrawal form marked as BEx-2 is not disputed, it is evident that the made the other concerned banks staff to believe that the said account holder was still alive and managed the withdrawal form processed for payment as such the inference drawn that he managed to withdraw the said amount by falsely attesting an LTM as that of the deceased account holder by a fictitious person hence only because the payment cashier was not examined the CSE cannot contend that the charges levelled against him being not proved. As rightly urged on behalf of the II Party when there is no dispute Smt. Narayanamma, SB Account Holder had expired on 16.01.1994 and the I Party has attested the LTM appearing on withdrawal form for drawing Rs. 20000/- dated 27.11.1999 as that of Smt. Narayanamma holder of SB Account No. 110 as urged by the learned advocate appearing for the II Party a Legitimate inference can be drawn that he managed to withdraw a sum of Rs. 20000/- from the deceased SB Account holder Smt. Narayanamma and to whom actually the payment was made by the Payment Cashier is immaterial as such only because the payment cashier Sh. T.V. Ghorpade is not examined in the Domestic Enquiry it cannot be said that the Enquiry Officer erred in holding the charges being proved. Under the circumstances, I find no reason to say the finding of the Enquiry Officer charge being proved as perverse. Accordingly, I arrived at conclusion of answering the Point No. 1 in the Negative.

9. **Point No. 2 and 3:** Since the misconduct proved against the I Party of fraudulently managing to withdraw a sum of Rs. 20000/- from the SB Account a deceased customer of the Bank falsely attesting the LTM appearing on the withdrawal form as that of Deceased customer the Disciplinary Authority could not have imposed any other punishment lesser than the one imposed by him dismissing from service. As such I have no reason to term the punishment of dismissal from service in the present case as disproportionate to the proved misconduct. In the result, I pass the following

ORDER

The reference is rejected holding that the action of the management SBM is justified in dismissing the services of Shri Bajjappa, Ex- Clerk, Devenahalli Branch *w.e.f.* 05.08.2001 and that he is not entitle for any relief.

S. N. NAVALGUND, Presiding Officer

नई दिल्ली, 7 फरवरी, 2014

का०आ० 674.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ़ त्रावनकोर प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक

अधिकरण अरनाकुलम के पंचाट (संदर्भ संख्या 37/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 07/02/2014 को प्राप्त हुआ था।

[सं एल-12012/35/2013-आई आर (बी-I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 7th February, 2014

S.O. 674.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 37/2013) of the Central Government Indus. Tribunal-cum-Labour Court, Ernakulam as shown in the Annexure in the Industrial Dispute between the management of State Bank of Travancore and their workmen, received by the Central Government on 07.02.2014

[No. L-12012/35/2013-IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

Present : Shri D. Sreevallabhan, B.Sc., LL.B,
Presiding Officer

(Tuesday the 28th day of November, 2013/7th
Agrahayana, 1935

ID 37/2013

Workman : Smt. Chinnamma
W/o Shri Mani K.S.
Kottarath House, Mepral PO
Peringara Village, Thiruvall Taluk
Pathanamthitta
Kerala

Manegement : The Assistant General Manager
State Bank of Travancore
P.B. No. 1115, Polachirakkal Chambers
Kottayam
Kerala-686002
By Adv. P. Ramakrishnan

This case coming up for final hearing on 28.11.2013 and this Tribunal-cum-Labour Court on the same day passed the following:

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, the Government of India, Ministry of Labour by its Order No. L-12012/35/2013-IR(B-I) dated 24.07.2013 referred this industrial dispute for adjudication to this tribunal.

2. The dispute is:

'Whether the action of the management of State Bank of Travancore in terminating the services of Smt. Chinnamma, Part-time sweeper from the Mepral Branch w.e.f. 06.07.2011 with following procedures laid down in the Industrial Disputes Act, 1947 is correct? What benefits she is entitled to?'

3. After receipt of summons management has only entered appearance. In spite of several adjournments workman did not appear and file any claim statement. Hence she was set ex-parte.

4. Management filed affidavit stating that the workman was only a casual employee engaged on need basis in the bank and later she was through selection process appointed as par-time sweeper on 1.11.2013. Since then she has been working as part-time sweeper 01.11.2013. Since hen she has been working as part-time sweeper on half scale.

5. As the workman has not entered appearance and filed any claim statement and there is nothing to show that she was illegally terminated from service the reference can be answered only in favour of the management in view of the averments contained in the affidavit.

6. In the result an award is passed finding that the action of the management in terminating the services of Smt. Chinnamma, part-time sweeper from the Mepral Branch w.e.f. 06.07.2011 without following the procedures laid down in the Industrial Disputes Act, 1947 is correct and hence she is not entitled to any benefit.

The award will come into force one month after its publication in the Official Gazette.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 28th day of November, 2013.

D. SREEVALLABHAN, Presiding Officer

APPENDIX-NIL

नई दिल्ली, 7 फरवरी, 2014

का०आ० 675.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार यूको बैंक के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय कोलकाता के पंचाट (संदर्भ संख्या 01/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 07/02/2014 को प्राप्त हुआ था।

[सं एल-39025/01/2010-आई आर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 7th February, 2014

S.O. 675.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central

Government hereby publishes the Award (Ref. No. 01/2005) of the Central Government Industrial Tribunal-cum-Labour Court, Kolkata as shown in the Annexure, in the Industrial Dispute between the management of UCO Bank and their workmen, received by the Central Government on 07.02.2014.

[No. L-39025/01/2010-IR(B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Misc. Application No. 01 of 2005

U/S. 33A of the I.D. Act, 1947

(Arising out of Reference No. 23 of 2000)

Parties: The General Secretary,
UCO Bank Employees' Association,
10, B.T.M. Sarani, 3rd Floor,
Kolkata-700001.

...Applicant.

Vs.

1. The General Manager (Personnel),
UCO Bank, Personnel Department,
Head Office,
12, Old Court House Street,
Kolkata-700001.
2. The General Manager OP-II
UCO Bank Head Office,
Martin Burn Building,
1, R.N. Mukherjee Road,
Kolkata-700001.
3. The Regional Manager, UCO Bank,
Regional Office, Ranchi,
Rajendra Jawan Bhawan Cum Sainik Bazar,
Main Road, Ranchi-834001.
4. The Senior Manager, UCO Bank,
Giridih Branch,
Buxidih Road, Giridih-815301,
Jharkhand

...Opp. Parties.

Present: Justice Dipak Saha Ray, Presiding Officer.

Appearance:

On the behalf of the Applicant	:	Mr. A. Ghosh, General Secretary of the union.
On behalf of the Opp. Party	:	Mr. N. Joarder, Chief Manager of the Bank.

Industry: Banking.

Date: 20th January, 2014.

AWARD

This is an application under Section 33A of the Industrial Disputes Act, 1947 filed by the General Secretary of the UCO Bank Employees' Association/Complainant alleging violation of the provision of Section 33 of the said Act against the opp. Parties/management/Kolkata Port Trust.

2. In the instant application it has been alleged on behalf of the Applicant/UCO Bank Employees Association that during the pendency of an industrial dispute before this Tribunal the Opp. Party/Bank management issued a circular on 25.04.2005 and thereby changed the service condition of the employees working at UCO Bank, Giridih Branch and as such violated the provisions of the Section 33 of the Act. The concerned union has, accordingly prayed for compensation, interest for the period for which salary of the employees was withheld, overtime allowance etc.

3. The Opp. Parties/Bank management has contested the said application by filing written objection denying all the allegations made in the application. It is the specific case of the Bank management that balancing of the books of accounts and keeping them upto date is part of banking job. It is the contention of the Opp. Parties that Bank management cannot afford to keep the balancing work in arrears and accordingly some serious measures were taken by issuance of the said notice in order to upto date the balancing work. It is also the contention of the Opp. Parties that there was no change of service condition by issuance of the said circular and as such there was no contravention of Section 33 of the Act by issuance of the said circular. Accordingly, dismissal of the application under Section 33A of the Act has been prayed for.

4. Considering the application under Section 33A of the Act, written objection thereto and also submission of the parties it appears that in this case only point is to be considered whether or not the issuance of the said circular entailed any violation of the condition of service of the concerned workmen.

5. The schedule of order of reference on the basis of which the Reference No. 23 of 2000 was registered, is that:

"Whether the action of the management of UCO Bank, 12, Old Court House Street, Calcutta-700001 in adopting the principle of 'no work no pay' in respect of employees of those branches which could not fulfill the targets of balancing of books which is reportedly a part of routine functioning is justified? If not, what relief the workmen are entitled to?"

During pendency of the said Reference No. 23 of 2000, one circular/instruction was issued on 24.04.2005 by the Chief Office, UCO Bank, Giridih Branch instructing the Senior Manager not to disburse the salary for the month of April, 2005 if the fully tallied IT-4 for the month of March, 2005 was not received.

6. The subject matter of adjudication in the said reference case and the subject matter of the instruction/circular dated 24.04.2005 issued by the Giridih Branch are almost same and identical; because in reference case it is to be adjudicated whether or not the management of UCO Bank was justified in adopting the principle of "no work no pay".

7. So, when the identical matter is pending for adjudication, the Giridih Branch of UCO Bank should restrain itself from issuing such instruction dated 24.04.2005. However, on careful scrutiny of the said instruction in question, it is clear that by issuing the said instruction dated 24.04.2005, the bank authority asked its employees to do their routine duties to complete the balancing etc. to keep the Bank's registers/documents upto date. So, by issuance of the said instruction/letter dated 24.04.2005 allegedly containing pressure/threat upon the employees cannot be said to have changed the condition of service of the employees because by issuance of the said instruction the employees of the Bank were not asked to do any job which they were not supposed to do.

8. Considering the above facts and circumstances and the discussions made hereinbefore, it appears that the condition of service of the concerned workmen was not changed by issuance of the said instruction/circular by the Bank.

9. Accordingly, the application under Section 33A of the Industrial Disputes Act, 1947 is not maintainable and the same is dismissed.

10. The Miscellaneous Application is thus disposed of.

JUSTICE DIPAK SAHARAY, Presiding Officer

Dated, Kolkata,
The 20th January, 2014.

नई दिल्ली, 7 फरवरी, 2014

कांआ 676.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार कोलकता पत्तन न्यास के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय कोलकता के पंचाट संदर्भ संख्या (20/2006) को प्रकाशित करती है जो केन्द्रीय सरकार को 07/02/2014 को प्राप्त हुआ था।

[सं एल-32011/12/2005-आई आर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 7th February, 2014

S.O. 676.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central

Government hereby publishes the Award (Ref. No. 20/2006) of the Central Government Indus. Tribunal-cum-Labour Court, Kolkata as shown in the Annexure in the Industrial Dispute between the management of Kolkata Port Trust and their workmen, received by the Central Government on 07.02.2014.

[No. L-32011/12/2005-IR(B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 20 of 2006

Parties : Employers in relation to the management of
Kolkata Port Trust

AND

Their workmen.

Present : Justice Dipak Saha Ray,
Presiding Officer

Appearance:

On behalf of the : Mr. M.K. Das, Industrial Relations
Management Officer

On behalf of the : Mr. Prafulla Sahu, Secretary of the
Workmen Union.

State : West Bengal.

Industry : Port & Dock.

Dated: 27th November, 2013

AWARD

By Order No. L-32011/12/2005 IR (B-II) dated 17.05.2006 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) of the industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication:

"Whether the action of the management of Kolkata Port Trust is not declaring the result of test/interview held on 23.02.2004 & 25.02.2004 for the post of L.D. Clerks under Legal Deptt. of KOPT, Kolkata held in pursuance of Circular dated 12.08.2003 and inviting fresh applications through another circular dated 16.04.2004 for the same posts without cancelling or even giving any reference of the previous circular and selecting the candidates only from the list who applied in response to later circular, ignoring the candidates appeared in the test/interview in response to former circular particularly the claimant i.e. (1) Shri Ujjal Kr. Banerjee & (2) Shri Debmalya Chatterjee, is legal

and justified? if not, to what relief the workmen are entitled for?"

2. When the case is taken-up today, authorized representative of the workmen appears and files an application and submits that the concerned workmen namely, Shri Debmalya Chatterjee and Shri Ujjal Kumar Banerjee have been transferred from Haldia Dock Complex (I&CF Division) and joined Hydraulic Study Department under the Kolkata Dock System and accordingly at present have no grievance against the management. From the above facts and circumstances, it appears that the matter has been amicably settled between the parties and as such the concerned union does not want to proceed with the case further.

3. Since the union which raised the present industrial dispute, has no grievance and has prayed for disposal of the reference, this Tribunal has no reason to proceed with the case any further. Accordingly the present reference is disposed of.

JUSTICE DIPAK SAHARAY, Presiding Officer

Dated: Kolkata,

The 27th November, 2013.

नई दिल्ली, 7 फरवरी, 2014

का०आ० 677.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सेंट्रल बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय कोलकता के पंचाट (20/2004) प्रकाशित करती है जो केन्द्रीय सरकार को 07.02.2014 को प्राप्त हुआ था।

[सं० एल-12011/11/2004-आईआर(बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 7th February, 2014

S.O. 677.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 20/2004) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, No. Kolkata as shown in the Annexure, in the industrial dispute between the management of Central Bank of India and their workmen, received by the Central Government on 07/02/2014.

[No. L-12011/11/2004-IR(B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
AT KOLKATA**

Reference No. 20 of 2004

Parties : Employers in relation to the management of
Central Bank of India

AND

Their workmen.

Present : Justice Dipak Saha Ray,
Presiding Officer

Appearance:

On behalf of the : Mr. G.C. Chakraborty, Advocate.
Management

On behalf of the : Mr. Panchu Mondal the workman
Workmen concerned in person.

State : West Bengal,

Industry : Banking.

Dated: 18th November, 2013.

AWARD

By Order No. L-12011/11/2004-IR(B-II) dated 02.06.2004 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) of the industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication:

"Whether the action of the management of Central Bank of India by not regularizing Sh. Panchu Mondal in the post of Peon is justified and also whether the action of the management, of CBI in not observing the Section 25F of the ID Act is justified? If not, what relief the concerned workman is entitled to?"

2. The workman concerned appears in person and files an application stating that the dispute has been settled amicably and he has been appointed as sub-staff in the Bank with effect from 28.03.2013 and accordingly he has been working there since then. It further appears from the petition of the workman that the workman is not willing to proceed with the case further as he has got no grievance against the Bank. From the documents filed on behalf of the Bank it further appears that the workman has already been appointed as sub-staff and he has been working there since 28.03.2013.

3. Since the workman in whose instance the instant reference has been initiated, has no grievance and has prayed for leave to withdraw the case, this Tribunal has no reason to proceed with the case any further. Accordingly the present reference is disposed of.

JUSTICE DIPAK SAHARAY, Presiding Officer

Dated Kolkata,

The 18th November, 2013.

नई दिल्ली, 7 फरवरी, 2014

का०आ० 678.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कांडला पोर्ट ट्रस्ट के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट (13/2011) प्रकाशित करती है जो केन्द्रीय सरकार को 07.02.2014 को प्राप्त हुआ था।

[सं० एल-37011/08/2010-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 7th February, 2014

S.O. 678.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 13/2011) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Ahmedabad (Gujarat) as shown in the Annexure, in the industrial dispute between the management of Kandla Port Trust and their workmen, received by the Central Government on 07/02/2014.

[No. L-37011/08/2010-IR(B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present:

Binay Kumar Sinha,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad, Dated 23rd December, 2013

Reference (CGITA) No. 13/2011

The Chairman,
Kandla Port Trust,
Post Box No. 50, Gandhidham(Management)
First party

And

Their Workman
Through the Union
The General Secretary,
Transport & Dock workers Union,
Room No. 21, Yogesh Building,
Plot No. 586/12-C
Gandhidham-370201Second party

For the Ist party : Shri Kishor V. Gadhia, Advocate
For the 2nd party : None

AWARD

The Central Government/Ministry of Labour, New Delhi vide its order No. L-37011/08/2010-IR(B-II) dated

23.02.2011 in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of the section 10 of the Industrial Dispute Act, 1947, referred the dispute the CGIT-cum-Labour Court, Ahmedabad for adjudication on the terms of reference in the Schedule:

SCHEDULE

"Whether the ABG Kandla Container Terminal Limited working as Container Terminal operator under agreement with Kandla Port on berth No. 11 & 12 is covered under stevedoring? If so, whether the action of the non-booking of dock/Shore workers/winch man at berth No. 11 and 12 handle by M/s. ABG Kandla Container Terminal Limited is legal and justified?

2. The Union (2nd party) failed to appeared and to file statement of claim even after proper notice ext. 2 and its acknowledgement (Ext. 4) whereas Ist party (management) appeared and executed power (Vakalatnama) in favour of its lawyer (Ext. 5). Even on as many as ten adjournments the 2nd party/Union failed to submit statement of claim. The onus is upon the Union to prove the case for which the dispute was raised. So the 2nd party has got no leg to stand in this reference. So it is

ORDER

The reference is dismissed having no cause of action to the Union/2nd party. No order as to any cost.

Let copy of award be sent to the appropriate Government for publication under section 17 of the I.D. Act.

BINAY KUMAR SINHA, Presiding Officer

नई दिल्ली, 7 फरवरी, 2014

का०आ० 679.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कांडला पोर्ट ट्रस्ट के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट (12/2011) प्रकाशित करती है जो केन्द्रीय सरकार को 07.02.2014 को प्राप्त हुआ था।

[सं० एल-37011/07/2010-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 7th February, 2014

S.O. 679.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 12/2011) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Ahmedabad (Gujarat) as shown in the Annexure, in the

industrial dispute between the management of Kandla Port Trust and their workmen, received by the Central Government on 07/02/2014.

[No. L-37011/07/2010-IR(B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present:

Binay Kumar Sinha,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad, Dated 23rd December, 2013

Reference (CGITA) No. 12/2011

The Chairman,
Kandla Port Trust,
Post Box No. 50, Gandhidham(Management)
First party

And

Their Workman
Through the Union
The General Secretary,
Transport & Dock workers Union,
Room No. 21, Yogesh Building,
Plot No. 586/12-C
Gandhidham-370201Second party

For the Ist party : Shri Kishor V. Gadhia, Advocate

For the 2nd party : None

AWARD

The Central Government/Ministry of Labour, New Delhi vide its order No. L-37011/07/2010-IR(B-II) dated 23.02.2011 in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of the section 10 of the Industrial Dispute Act, 1947, referred the dispute the CGIT-cum-Labour Court, Ahmedabad for adjudication on the terms of reference in the Schedule:

SCHEDULE

"Whether the action of the management of Kandla Port Trust, Gandhidham in not filling of post of Personal Assistant which was vacant in Kandla Dock Labour Board (now merged with Kandla port Trust) in Cargo Handling Division as per board resolution No. 853 dated 21.02.2005 is legal and justified? What relief the workmen are entitled to?"

2. Consequent upon notice the Ist party (K.P.T.) appeared and executed power (Vakalatnama) in favour of its lawyer, but the Union 2nd party who raised the dispute

failed to appear to file statement of claim in spite of as many as ten adjournments.

3. So there is reason to believe that the Union is not at all interested to support its claim on the dispute as per schedule so this reference has no merit. Therefore, the following order is passed.

ORDER

The 2nd party Union has no leg to stand. The Schedule containing the terms of reference is answered in favour of the management of Kandla Port Trust justifying its action in not filling of the post of Personal Assistant.

The reference is dismissed. However, no order of any cost.

Let copy of award be sent to the appropriate Government for publication u/s. 17 of the I.D. Act, 1947.

BINAY KUMAR SINHA, Presiding Officer

नई दिल्ली, 10 फरवरी, 2014

का०आ० 680.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट (46/2007) प्रकाशित करती है जो केन्द्रीय सरकार को 10.02.2014 को प्राप्त हुआ था।

[सं० एल-12012/131/2006-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 10th February, 2014

S.O. 680.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 46/2007) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Ahmedabad (Gujarat) as shown in the Annexure, in the industrial dispute between the management of Bank of India and their workmen, received by the Central Government on 10/02/2014.

[No. L-12012/131/2006-IR(B-II)]

RAVI KUMAR, Section Office

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present:

Binay Kumar Sinha,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad, Dated 26th December, 2013

Reference (CGITA) No. 46/2007

1. Bank of India,
Through Chief Manager (CS & HR)
Ahmedabad-380018
2. The Branch Manager,
Bank of India,
Raipur Chakla Branch,
Raipur Chakla,
Ahmedabad

....First party

And

Their workman
Shri Dineshbhai Popatbhai Parmar
C/o Navyug Labour Union,
12, 2nd Floor, Karishma Flats,
Maniyasa under bridge,
Maninagar (E),
Ahmedabad (Gujarat)

...Second Party

For the Ist party : Ms. Meenaben Shah, Advocate

For the 2nd party : None

AWARD

As per Order No. L-12012/131/2006 (IR (B-II)) New Delhi dated 07.06.2007, the Central Government/ Ministry of Labour under clause (d) of sub section (1) and sub section (2A) of section 10 of the Industrial Disputes Act, 1947 referred to this tribunal for adjudication on the terms of reference in the Schedule:

SCHEDULE

"Whether the action of the management of Bank of India through Chief Manager (CS & HR), Ahmedabad for awarding punishment of compulsory retirement from the bank's service vide their letter dated 10.01.2005 is valid and justified? If not, what relief the workman is entitled to, and to what extent?"

2. In spite of notice repeatedly issued against the 2nd party workman. He failed to submit statement of claim. However, the Union General Secretary K.D. Panchal appeared and filed pursis (Ext. 4) for adjournment on 22.07.2008, then filed authority letter (Ext.9) of the workman authorising Navyug Labour Union's General Secretary to appear in this case. The Union filed pursis (Ext.10) for adjournment on 06.08.2009. But as yet no statement of claim filed. Whereas the Ist party (Bank) appeared on 09.02.2008 and filed application Ext.7 and then filed Vakilpatra (Ext.8) executed in favour of Gandhi Associates Ms. Meenaben Shah on 19.02.2009, thereafter the Ist party used to attend the court on dates but workman remained absent and his Union also did not care to submit statement of claim.

3. The Ist party's lawyer Ms. Meenaben Shah by a pursis (Ext.11) dated 18.03.2011 prayed to close the stage of filing statement of claim and to lead evidence of the 2nd party and last chance was given. Thereafter the Union General Secretary K.D. Panchal filed pursis (Ext. 12) on

same date 18.03.2011 to dismiss the reference since workman Dinesh Popatbhai Parmar is not available.

4. Today, the Ist party's lawyer Ms. Meenaben Shah, Advocate moved the pursis of Union (Ext.12).

5. The 2nd party failed to submit the statement of claim and as per pursis (Ext.12) had prayed to dismiss the reference. As such following order is passed.

ORDER

The reference is dismissed having no merit. The terms of reference is answered in favour of the Ist party, justifying punishment of compulsory retirement of the workman from bank's service.

BINAY KUMAR, SINHA, Presiding Officer

नई दिल्ली, 10 फरवरी, 2014

कांआ 681.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार देना बैंक प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय अहमदाबाद के पंचाट (1162/2004) प्रकाशित करती है, जो केन्द्रीय सरकार को 10/02/2014 प्राप्त हुआ था।

[सं एल-12012/90/2000- आई आर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 10th February, 2014

S.O. 681.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 1162/2004) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Ahmedabad (Gujarat) as shown in the Annexure, in the industrial dispute between the management of Dena Bank and their workmen, received by the Central Government on 10/02/2014.

[No. L-12012/90/2000-IR(B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
AHMEDABAD**

Present:

Binay Kumar Sinha,
Presiding Officer, CGIT cum Labour Court,
Ahmedabad, Dated 16th December, 2013

Reference (CGITA) No. 1162/2004

Reference (I.T.C) No. 16/2000(old]

1. General Manager, Dena Bank, Mumbai
2. The Regional Manager,
Dena Bank,
Regional office, Gokul Chambers,
2nd floor, Dhebarbhai Road,
Rajkot (Gujarat) 300001
3. Branch Manager, Dena Bank,
Visavadar Branch,
Dist. JunagadhFirst Party

And

Their Workman
Navniray Hargovindbhai Taily
Mear Jain Mahajan Wadi,
Junagadh-362130Second party

For the First Party : None

For the second party : Shri P.H. Kanjaria, Advocate,
Junagadh

AWARD

The Central Government/Ministry of Labour, New Delhi by its order No. L-12012/90/2000 IR(B-II) dated 18.10.2000 in exercise of powers under clause (d) of sub section (1) of section 10 of Industrial Dispute Act, 1947 referred the dispute for adjudication to Industrial Tribunal, Rajkot (Gujarati) on the terms of reference in the Schedule:

SCHEDULE

"Whether the action of the Dena Bank, Rajkot/Visavadar in terminating/discontinuing the services of Shri Navnitray Hargovindbhai Taily, Budli sepy w.e.f. 12.06.1999 is legal and justified? If not, what relief the workman is entitled to and what directions are necessary in the matter?"

2. The case of the workman as per statement of claim (Ext.3] dated 27.03.2001 is that he was working as a peon in the Visavadar branch of the Dena Bank from 01.06.1999 to 11.06.1999. Before that he had continuously worked in different branches in Saurashtra region under the jurisdiction of the 1st party No 1 & 2 viz in the year 1984 at Visavadar branch, December 1984 to 1985 at Sarsai, 1986 to 1990 at Visavadar, 1991-92 at Bardia Branch, 1993 to November 1994 at Motimonpari, 1998 November Motimonpari and thereafter from 01.06.1999 to 11.06.1999 at Visavadar branch under 1st party No.3 but without giving notice, or notice pay and retrenchment compensation, the 1st party No 3 Branch Manager, Visavadar branch of Dena Bank contravening the provision of section 25F of the I.D. Act, illegally terminated him w.e.f. 11.06.1999. He repeatedly submitted representation for his reinstatement on the post but all went in vain. Then he raised dispute before A.L.C (Central) Adipur but conciliation failed and on failure report the appropriate Government made reference for

adjudication. Further case is that in his place the 1st party has engaged new person at Visavadar branch and he was ignored. On these scores prayer is to declare the action of the 1st party illegal and unjustified in terminating him (workman) w.e.f. 11.06.1999, to reinstate him with back wages and with cost of litigation and to any other relief to which he is found.

3. The 1st party (Dena Bank) also appeared and filed written statement (Ext 7) on 24.11.2003 contending therein that the statement of claim of the workman is baseless and not based on any legal right, and so reference is not maintainable and is liable to be dismissed. In reply to para 1 & 2 of S/c it is stated that the workman Navnitray was given the work purely on temporary basis on leave vacancy only of regular staff. He was not given permanent appointment letter. There was no relationship of master and servant. So there is no question of illegal termination of Navnitray. His engagement was not processed through Bank's recruitment rules and regulations. The concerned workman had never gone the process of selection and that he was never employed in bank service. On these scores prayer was made to dismiss the reference as the 2nd party workman is not entitled to any relief.

4. As per the rival contention of the parties in respective pleadings, the following issues are taken up for determination in this case:

ISSUES

- (i) Is the reference maintainable?
- (ii) Has the workman Navnitray valid cause of action in this case?
- (iii) Whether there exist master and servant relationship between the parties?
- (iv) Whether the 2nd party (workman) completed 240 days in calendar year preceding his termination on 11.06.1999?
- (iv) Whether the action of the 1st party Dena Bank, Rajkot/Visavadar in terminating/discontinuing the services of Shri Navnitray, Budli sepy w.e.f. 11.06.1999 is legal and justified?
- (vi) Whether the 2nd party is entitled to get relief in this case? If so, to what extent?

FINDINGS

5. **ISSUE NO. III and IV:** The workman Navnitray deposed on affidavit vide Ext. 8. But in spite of giving opportunity the 1st party failed to avail opportunities of cross examination. Thereafter vide Ext.13 right of cross examination off the 1st party Bank was closed on 28.11.2008. Thereafter again right to cross examination of workman was reopened but the 1st party did not avail the opportunity and 1st party left doing pairvi in the case. Then from the Industrial Court, Rajkot notice to Dena Bank, Rajkot was

issued and the notice was received by 1st party lawyer Shri M.K. Paul on behalf of Dena Bank. Then vide a pursis Ext. 19 the 2nd party lawyer Shri P.H. Kanjaria prayed for disposal of case in view of oral and documentary evidence and written argument (Ext. 16). In the meantime case record received in this C.G.I.T. from Industrial Court, Rajkot by order of MOL, New Delhi. Then fresh notice (Ext. 18) was issued. Then vide pursis (Ext. 19) dated 26.04.2011 the 1st party (Bank's) lawyer Shri M.K. Paul, Advocate one adjournment was sought for producing oral evidence of the 1st party which was granted. Again by a pursis (Ext. 20) another adjournment was granted to 1st party for adducing oral evidence. Again by another pursis Ext. 21 filed on 16.11.2011. 1st party sought for another adjournment to adduce oral evidence upon which 2nd party workman noted down strong objection. However, last chance was given to the 1st party. Then on next date 21.12.2011 again adjournment pursis (Ext. 22) was filed by Shri M.K. Paul, Advocate (Bank's Lawyer) and adjournment was granted on payment of cost of Rs. 200 to the S.P. workman. The workman side filed a pursis on the same date 21.12.2011 (vide Ext. 23) to pass the award in this case and its copy also received by Shri M.K. Paul, Bank's Lawyer. The record was put up on next date 01.03.2012 and again pursis (Ext. 24) was filed for adjournment by the 1st party and then order below Ext. 24 was passed closing the right of the 1st party to adduce evidence and the case was fixed for hearing argument. Thereafter 1st party remained absent on dates 05.04.2012, 10.07.2012, 01.08.2012, 05.11.2012, 11.01.2013, 26.04.2013, 01.07.2013 and 11.09.2013. The argument of Shri P.F. Kanjaria, Advocate for the workman 2nd party was heard. No one for argument on behalf of the 1st party and the matter was kept for passing award.

6. The unchallenged oral evidence of workman (Ext. 8) is in support of his case as per statement of claim. The 2nd party through list (Ext. 5) produced 21 documents on 04.04.2002 and its copy received by Shri M.K. Paul, Advocate for the 1st party (Dena Bank). Ext 5/1 is letter of Dena Bank dated 13.02.1990 addressed to postmaster Visavadar asking to Postmaster to hand over letters Ext.5/2 is another letter dated 23.03.1990 of Dena Bank asking postmaster, Visavadar to give letter to Navnit Taily (Workman) Ext.5/3 is letter of Dena Bank branch Moti Monpari, Dist. Junagarh addressed to Regional Manager, Dena Bank, Rajkot dated 31.03.1992 enclosing application of Navnit Taily (workman) for enrolment of his name as budli sepoy. Ext. 5/4 is another letter of Moti Monpari branch of Dena Bank sent to Regional Manager, Rajkot on subject of enrolment of N.H. Taily (workman) as Budli sepoy in the panel list since Ashish Jirwani enrolled as budli sepoy has already been taken up as P.T.C. at our Una Branch and there is no name in the list also intimating that the works of N.H. Taily is satisfactory when regular employee proceeds on leave. Ext 5/5 is letter dated 13.05.1994 addressed to Regional Manager, Rajkot by Branch Manager, Dena Bank,

Moti Monpari Branch regarding P.T.C. and engagement of Navnitray Taily as Budli sepoy and has did hard works in different branches. Ext. 5/7 is forwarding letter dated 10.09.1994 of Branch Manager, Visavadar Branch of Dena Bank to Regional Manager, Rajkot recommending for P.T.C. (part time cleaner) in Visavadar branch. Ext 5/8 is another forwarding letter addressed to Regional Manager, Dena Bank, Rajkot intimating that workman Navnitray H. Taily is working as budli sepoy in our four branches, Visavadar, Sarsai, Moti Monpari and Baradia at different intervals and that he is an honest and hardworking person and that he may be engaged at part time sweeper in any of our four branches. Ex. 5/6 is regarding payment of bonus to budli sepoy N.H. Taily (workman) and also to a clerk namely J.J. Trivedi for the period 01.04.1993 to 31.03.1994 by Dena Bank, Moti Monpari branch, Dist. Junagadh this was informed to Regional Manager, Rajkot. Ext. 5/9 dated 02.03.1997 and Ext. 5/14 dated 19.11.1997 are appreciation certificate given to the workman Navnitray H. Taily from Sarsai branch of Dena Bank. Ext. 5/13 date 14.10.1997 is appreciation certificates given to Navnitray H. Taily from Visavadar branch of Dena Bank while working as temporary peon (Hungami Peon). Ext. 5/11 dated 20.03.1997, Ext. 5/12 dated 10.10.1997 and Ext. 5/15 dated 13.01.1998 are letter of appreciation of work and entrustment of work to Navnitray even in Treasury Office, Visavadar by the Branch Manager of Motimonpari, branch of Dena Bank. Ext. 5/16 is letter of appreciation dated 06.06.1998 given to Shri N.H. Taily (workman) and Shri J.J. Trivedi by the Regional Office, Rajkot of Dena Bank regarding sincere efforts in collection of Rs. 630000 and raising deposits in bank for ensuring among customers for better customer services. Ext. 5/17 is Savings Bank pass book of the workman Navnitray H. Taily dated 28th July, 1994 showing statement regarding deposits of salary for his monthly works of budli sepoy that go to shows his works for more than 240 days in year and also showing payment of bonus for the year 1994-95 of the amount of Rs. 858.66. Ext. 5/18 is notice under section 10 (1) of the I.D. Act to the 1st parties (Dena Bank) and Ext. 5/19, 5/20 and 5/21 are acknowledgement in token of receipt of notices by the 1st party No. 1 to 3.

7. As against this the 1st party failed to substantiate its contention so raised in W.S. Ext. 7 by leading evidence. The W.S. is a pleading which require support by oral and documentary evidence. On the other hand the 2nd party workman has abundantly adduced evidence as discussed above to establish relationship of master and servant in between the 1st party (Dena Bank) and Navnitray H. Taily (the workman). The unchallenged oral evidence of workman Navnitray (Ext. 8) and the documentary evidences Ext.5/1 to 5/17 go to prove that the 2nd party (Navnitray H. Taily) has worked continuously as budli sepoy in different branches of Dena Bank i.e. Visavadar, Sarsai, Moti Monpari, Baradia and taking into account of his works in different branches he completed 240 days of works in Calendar year

and also in the calendar year preceding his termination w.e.f. 11.06.1999 from Visavadar branch of Dena Bank.

8. As per discussion and consideration made in the foregoing paras, I find and hold that master and servant relationship was very well existing in between the 1st party (employer) and the 2nd party (Navnitray H. Taily) till 11.06.1999. I further find and hold that Navnitray H. Taily (S.P.) has completed 240 days of work in calendar year preceding termination w.e.f. 11.06.1991. So these, two issues are answered in favour of the 2nd party.

9. **ISSUE NO. V:-** In view of the findings to issue no. iii and iv in the foregoing. I further find and hold that the employer (1st party, Dena Bank) has clearly violated the provision of section 25F of the Industrial Disputes Act, 1947 is terminating the 2nd party from the service of budli sepoy w.e.f. 11.06.1999 without complying with the provisions and the 1st party has failed to give notice to the 2nd party workman, or one month pay in lieu of notice and retrenchment compensation to the 2nd party. So the terms of reference in the schedule is answered against the 1st party (Dena Bank) that the action of the Dena Bank, Rajkot, Visavadar, in terminating/discontinuing the services of Shri Navnitray H. Taily, Budli sepoy w.e.f. 11.06.1999 is not legal and justified.

10. **ISSUE NO. I & II :-** The reference is maintainable and the 2nd party has valid cause of action to raise industrial dispute through this reference case.

11. **ISSUE NO. VI :-** In view of the findings to Issue No. I, II, III, IV & V in the foregoing. I further find and hold that the 2nd party workman Navnitray H. Taily is entitled to the relief of reinstatement as budli sepoy with continuity of service and with 50% of back wages.

The reference is accordingly allowed. No order as to cost.

The 1st party (Dena Bank) are directed to reinstate the workman Navnitray H. Taily as budli sepoy and to pay the 50 % of back wages within two months of the receipt of the copy of award; failing which the 50% back wages shall carry interest @ 9% P.A.

BINAY KUMAR SINHA, Presiding Officer

नई दिल्ली, 10 फरवरी, 2014

का०आ० 682.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार विजया बैंक के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट (126/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10.02.2014 को प्राप्त हुआ था।

[सं० एल-12012/1/98-आई आर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 10th February, 2014

S.O. 682.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 126/2004) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Ahmedabad (Gujarat) as shown in the Annexure, in the industrial dispute between the management of Vijaya Bank and their workmen, received by the Central Government on 10/02/2014.

[No. L-12012/1/98-IR(B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

PRESENT:

Binay Kumar Sinha,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad, Dated 17th December, 2013

Reference: (CGITA) No. 126/2004

Reference (I.T.C.) No. 107/1999(old)

The Branch Manager,
Vijaya Bank,
Sarasour Branch, Saraspur,
Ahmedabad-380018

....First Party

And

Their workman
Mrs. Dinaben Solanki,
Near New Post Office

Through

The Regional Secretary,
Vijaya Bank Employees Association,
C/o. Vijaya Bank, Saraspur Branch,
Saraspur, Ahmedabad-380018

....Second Party

For the 1st party : None

For the 2nd party : Shri B. K. Sharma, Union
Representative, Jt. Secretary,
Ahmedabad Jilla Mazdoor Sangh.

AWARD

The Central Government/Ministry of Labour, New Delhi vide its Order No. L-12012/1/98-IR(B-II) dated 04.12.1998, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of the Industrial Disputes Act, 1947, referred the dispute for adjudication to Industrial Tribunal, Ahmedabad on the terms of reference in the Schedule :

SCHEDULE

"Whether the demand of the Vijaya Bank Employees Association for regularisation of Mrs. Dinaben Solanki, Temporary sweeper to the post of part time sweeper according to codified circular No. 30/93 of the Vijaya Bank w.e.f. 18.04.1996 is legal and justified? If yes, to what relief the concerned workman is entitled?"

2. The case of 2nd party Union as per statement of claim (Ext. 3) is that Mrs. Dinaben Solanki worked in Vijaya Bank, Relief Road, Ahmedabad branch from 08.10.1973 to 16.08.1994 and in Saraspur branch, Ahmedabad from 17.08.1994 to 18.04.1996 as a sweeper. She was retrenched from 19.04.1996 without observing provisions of I.D. Act. She was retrenched even though there was vacancy of the post of sweeper. She completed 240 working days during one year. Vijaya Bank management engaged new worker as part time permanent sweeper from 19.04.1996. As per codified circular No. 30/93 bank administrations require to absorb permanent staff from the employees who are serving as Temporary staff. As per agreement between Vijaya Bank workers organisation, Ahmedabad Region and AGM, Vijaya Bank, Ahmedabad, the employees who completed 90 days should be made permanent and accordingly management appointed sub staff for permanent vacancies. But Vijaya Bank failed to give permanent appointment to Mrs. Dinaben Solanki. Her removal is totally illegal and requires to be set aside and she should be treated as on duty from 18.04.1996, and all consequential benefits should be given to her and also any other relief to which she is found entitled. The relief has been sought for giving Mrs. Dinaben Solanki, part time job from 18.04.1996 when she was retrenched and she be also given monetary benefit from 19.04.1996 to the date of award.

3. As against this the contention of the 1st party (Bank) as per written statement filed twice with verbatim reproduction is *vide* Ext. 13 filed on 04.05.2000 and again *vide* Ext. 16 filed on 22.03.2001 is that the reference is not maintainable, the 2nd party is put to strict proof that Mrs. Dinaben Solanki had worked as sweeper from 08.10.1973 to 16.03.1994 and 17.08.1994 to 18.04.1996 at Relief Road and Sarapur Branches respectively, there is no relation of master and servant between 1st party and 2nd party workman. Smt. Dinaben Solanki was never workman of the 1st party and that she never completed 240 days working days. There is no question of observing the provisions of the I.D. Act, codified circular No.30/93 is not applicable to the case of Mrs. Dinaben Solanki alternative plea has been taken in this way that even if it is believed that Mrs. Solanki had been working in the manner as alleged in the statement of claim, then also ad hoc employee do not get any right and as per settled law of the land only regular selected candidate through proper channel are eligible to be taken in the job. It has been denied about any agreement between the

1st party and 2nd party Union or any other body to absorb employees completing 90 days. It is denied that any rules and regulations are violated by the 1st party Bank in refusing to appoint Mrs. Solanki. Further case is that ad hoc employment/appointment can only be temporary appointments as they are against the rules and regulation and till the regular appointees are available they may be working but sooner regular employees are available temporary employees however long they have worked have no right. On these scores prayer is made to dismiss the reference since 2nd party is not entitled to any relief.

4. In view of rival contention of the parties in respective pleadings, the following issues are taken up for determination:

ISSUES

- (i) Is the reference maintainable?
- (ii) Whether the 2nd party Union has valid cause of action in this case?
- (iii) Whether there exist relationship of Master and servant in between the 1st party Vijaya Bank and the workman Mrs. Dinaben Solanki?
- (iv) Whether Mrs. Dinaben Solanki completed 240 working days in callender year during her period of work as sweeper from 08.10.1973 to 18.04.1996 at the branches of Vijaya Bank at Relief Road, Ahmedabad and Saraspur, Ahmedabad as claimed?'
- (v) Whether the action of the management of Vijaya Bank (1st party) is justified in removing Mrs. Dinaben Solanki from the temporary job of sweeper from 18.04.1996?
- (vi) Whether the demand of the Union the 2nd party for regularisation of Mrs. Dinaben Solanki w.e.f. 18.04.1996 as per schedule of terms of reference is legal and justified?
- (vii) To what relief the concerned workman Mrs. Dinaben Solanki is entitled?

FINDINGS

5. **ISSUE No. III and IV:—** The 2nd party submitted 8 documents through a list Ext. 14, Ext. 14/1 is Vijaya Bank, Personal Dept. codified circular 30/93. Ext. 14/2 is abstract of clarification of workman in chapter IV of service condition of Bank employee. Ext.14/3 is payment slip of bonus payment for the year 1992/93, 1991/92, 01.01.1988 to 31.03.1989, 1993/94. Ext. 14/4 is personal Department circular No. 57/92 of Vijaya bank for processing of application of temporary sweeper who had worked in the Bank during the period from 01.01.1982 to 31.12.1989. Ext. 14/5 is bonus calculated sheet for the year April 1993 to March 1994 and April 1992 to March 1993. Ext. 14/6 is confidential

letter No. ROA/STF/ACT/6457/96 dated 17.12.1996 of Vijaya Bank Ext. 14/7 is reply of Chief Manager, Relief Road, Ahmedabad Branch with reference to letter No. ROA/STF/ACT/6457/96 dated 17.12.1996 informing as to wages paid on monthly basis for the year 1982, 1983, 1984 and 1987 to Dinaben Solanki at Relief Road branch and regarding payment of wages on monthly basis for the year 1985 and 1986. It was said that the record is not available. Ext. 14/8 application of Smt. Dinaben Solanki dated 04.03.1991 forwarded by Branch Manager, Relief Road, Ahmedabad. From perusal of Ext. 14/3, Ext. 14/4, Ext. 14/5, Ext. 14/6, Ext. 14/7 and Ext. 14/8 together with Exparte oral evidence of Smt. Dinaben Solanki *vide* Ext. 19. Sufficiently go to prove that Smt. Dinaben Solanki was continuously serving as sweeper (scavenger) in the branch at relief road and Saraspur of Vijaya bank continuously and was getting monthly wages and she was also getting yearly bonus at 8.33% of salary. As per Ext. 15, the 2nd party had demanded from the 1st party Vijaya Bank for production of four documents *viz.* Expenditure Registers for the year 1973 to August 1994 of Relief Road branch and from August 1994 to April 1996 of Saraspur branch of Vijaya bank, Ahmedabad payment voucher for payment to Smt. Dinaben Solanki from 1973 to August 1994 of Relief Road branch and for period from August 1994 to April 1996 of Saraspur branch of Vijaya Bank, Ahmedabad. This demand was made by filing application on 01.09.2000 and its copy was received by branch manager of Saraspur, Ahmedabad. But the 1st party did not produce those documents as per Ext.15 nor replied on Ext.15 and subsequently left pairvi in this case and did not cross examine Mrs. Dinaben Solanki on her oral evidence (Ext.19). In such view of the matter adverse inference has to be drawn against the 1st party that the 1st party purposely withheld production of the documents as per Ext. 15 for wilful suppressing the real fact that Mrs. Dinaben Solanki alalong served as temporary sweeper in the branches of Vijaya Bank at Relief Road, Saraspur respectively from 08.10.1973 to 18.08.1994 and from 17.08.1994 to 18.04.1996.

6. Thus from the evidence documentary and oral adduced on behalf of the 2nd party the relationship of master and servant is proved sufficiently that the management of the 1st party Vijaya Bank was alalong treating Mrs. Dinaben Solanki as its workman. Further it is also sufficiently proved that the 2nd party Mrs. Dinaben Solanki completed 240 working days as part time sweeper in two branches of Vijaya Bank in every Calendar year preceding her termination on 18.04.1996. So the Issues No. III and IV are answered in favour of the 2nd party.

7. **ISSUE No. V:-** In view of the findings to Issue No. III and IV in the foregoing paragraph. I further find and hold that the action of the management of Vijaya Bank (1st party) is illegal and unjustified in removing Mrs. Dinaben Solanki from her job of temporary sweeper from 18.04.1996 without complying with the provision of

section 25F of the Industrial Disputes Act, 1947. It was incumbent upon the 1st party to give one month notice or notice pay in lieu of notice and retrenchment compensation to her who had completed 240 days in every calendar year during her long tenure of service and also particularly in the calendar year preceding his removal/termination. So the 1st party is held liable for contravention of the provisions of section 25F of the Industrial Dispute Act, 1947. This issue is answered against the 1st party (Vijaya Bank).

8. **ISSUE No. I & II :-** In view of the findings to issue Nos. III, IV and V in the foregoing, this tribunal is of considered view that the reference is maintainable and the 2nd party workman Mrs. Dinaben Solanki has valid cause of action in this case against the 1st party Vijaya Bank.

9. **ISSUE No. VI and VII :-** Due to the full bench decision of the Hon'ble Supreme Court in the Umadevi case there cannot be claim for regularisation of Smt. Dinaben Solanki as per demand of the Vijaya Bank Employers Association as per terms of reference in the Schedule. But even then the concerned workman Smt. Dinaben Solanki is not out of court. Earlier in such case of clear violation of section 25F of the I.D. Act, 1947, reinstatement with full or any part of back wages was usually ordered in favour of the workman. But after the decision of the division Bench of the Hon'ble Supreme Court in the case of senior superintendent of telegraph (traffic) Bhopal *Vs.* Sanoshkumar Seal & Others reported in 2010 (iii) CLR 17 reinstatement cannot be claimed as a matter of right by daily wager/casual worker who completed 240 days in calendar year rather awarding of reasonable compensation would sub serve the ends of Justice.

10. Considering the long tenure of service of Mrs. Dinaben Solanki right from October 1973 to 18th April, 1996 uninterruptedly as temporary sweeper, a sum of Rs. Two Lakh only is awarded to her by way of compensation payable by the 1st party Vijaya Bank to her with interest @ Rs. 6% P.A. from 03.04.1999 i.e. from the date of filing statement of claim by the 2nd party in the court.

11. Thus Issue No. VI is answered in negative but Issue No. VII is answered accordingly in favour of the 2nd party regarding payment of compensation with interest indicated at Para 10 of this Award.

This reference is allowed in part with cost of Rs. 2000/-.

The 1st party is directed to pay the amount of compensation with interest in one lumpsum by issuing cheque/draft in favour of Smt. Dinaben Solanki within two months of the receipt of the copy of Award.

BINAY KUMAR SINHA, Presiding Officer

नई दिल्ली, 10 फरवरी, 2014

का०आ० 683.—औद्योगिक विवाद अधिनियम, 1947, 1947 का 14 की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय जीवन बीमा निगम के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, धनबाद के पंचाट (संदर्भ संख्या 34, 35, 36, 37, 38, 39/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05/02/2014 को प्राप्त हुआ था।

[सं० एल-17012/24,25,26,28,29,32/2003-आई आर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 10th February, 2014

S.O. 683.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 34, 35, 36, 37, 38 and 39/2004) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure, in the industrial dispute between the management of LIC of India and their workmen, received by the Central Government on 05/02/2014.

[No. L-17012/24, 25, 26, 28, 29, 32/2003-IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT:

Shri Kishori Ram, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947.

Reference No. 34 of 2004 :

The General Secretary,
NLIEA (INTUC), Muzaffarpur (Division), Muzaffarpur for
Shri Harendra Paswan (workman)
[Ministry's Order No. L-17012/25/2003-IR(B-I) dt.
08.03.2004]

WITH

Reference No. 35 of 2004 :

For Raghubans Kumar (workman)
[Ministry's Order No. L-17012/24/2003-IR(B-I) dated
08.03.2004]

WITH

Reference No. 36 of 2004 :

Shri Gopal Kumar (workman)
[Ministry's Order No. L-17012/26/2003-IR(B-I) dated
08.03.2004]

Reference No. 37 of 2004 :

Shri S.K. Jha (workman)
[Ministry's Order No. L-17012/28/2003-IR(B-I) dated
08.03.2004]

WITH

Reference No. 38 of 2004 :

Shri B.K. Tewari (workman)
[Ministry's Order No. L-17012/29/2003-IR(B-I) dated
08.03.2004]

WITH

Reference No. 39 of 2004 :

Shri Navin Kumar (workman)
[Ministry's Order No. L-17012/32/2003-IR(B-I) dated
08.03.2004]

Vs.

**Management of Life Insurance
Corporation, Muzaffarpur Division,
Muzaffarpur**

APPEARANCES:

On behalf of the : Mr. B.N.P. Srivastava,
workmen/Union Rep. of the workmen

On behalf of the : Management's
Management Representatives

State : Bihar
Industry : Insurance

Dated : Dhanbad, the 15th January, 2014

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec. 10(1)(d) of the I.D. Act., 1947 has referred the following disputes to this Tribunal for adjudication *vide* their Order Nos. referred to above going paras under Reference heads as per the Schedules:

THE SCHEDULE OF REF. NO. 34 OF 2004

"Whether the action of the Management of LIC of India, Muzaffarpur in refusing to accept the claim of the union in regularizing the services of Sri Harendra Paswan working in the establishment Since 1983 continuously is legal and justified? If not to what relief the workman is entitled to?"

THE SCHEDULE OF REF. NO. 35 OF 2004

"Whether the action of the management of LIC of India, Muzaffarpur in refusing to accept the claim of the union in regularizing the services of Sri Raghubans Kumar working in the establishment since 1988 continuously is legal and justified? If not to what relief the workman is entitled to?"

THE SCHEDULE OF REF. NO. 36 OF 2004

"Whether the action of the management of LIC of India, Muzaffarpur in refusing to accept the claim of the union in regularizing the services of Sri Gopal Kumar working in the establishment since 1992 continuously is legal and justified? If not to what relief the workman is entitled to?"

THE SCHEDULE OF REF. NO. 37 OF 2004

"Whether the action of the management of LIC of India, Muzaffarpur in refusing to accept the claim of the union in regularizing the services of Sri S.K. Jha, working in the establishment since 1990 continuously is legal and justified? If not to what relief the workman is entitled to?"

THE SCHEDULE OF REF. NO. 38 OF 2004

"Whether the action of the management of LIC of India, Muzaffarpur in refusing to accept the claim of the union in regularizing the services of Sri B.K. Tewari working in the establishment since 1990 continuously is legal and justified? If not to what relief the workman is entitled to?"

THE SCHEDULE OF REF. NO. 39 OF 2004

"Whether the action of the management of LIC of India, Muzaffarpur in refusing to accept the claim of the union in regularizing the services of Sri Navin Kumar working in the establishment since 1992 continuously is legal and justified? If not to what relief the workman is entitled to?"

2. Since all the Analogous Ref. Cases being between the same parties for same and similar causes have been amalgamated with the present Ref. Case as per Order No. 21.5.2011 of the Tribunal, so the Award passed in the present Ref. shall have banding upon the parties of the analogous Reference cases.

3. All the six cases as set forth by the Union Representative in the written statements for six workmen Harendra Paswan and others concerned have been continuously working as class IV sub-staff (peon) in Branch No-1, Muzaffarpur under the jurisdiction of Muzaffarpur Division of L.I.C. of India since 1983. Each of the workmen has completed more than 240 days in each calendar year, discharging their duties full sensibly. But the Management of the L.I.C. did not absorb them in its permanent service. Further alleged that the Award passed by the CGIT, New Delhi, in the I.D. No.27/1991 as referred by the Central Government in respect of the non-absorption of such Badli, temporary and Part time workmen employed in the LIC establishment after 20.05.1985 was based on appreciation/appraisal of all material evidence, oral and documentary both. The Hon'ble High Court, Delhi pronounced its judgment on 15.04.2004 in the W.P.S. No. 4346/2001 against the employer which is under challenge by way of proper appeal before the higher Bench of Law at New Delhi. So it has been urged to pass an award

so that these workmen may get the benefits of the aforesaid award of the above I.D. No. 27/1991.

4. The Union in its rejoinder categorically but in collectively passes responded to allegations of the O.P./ Management, stating that the Management has wrongly designated the workmen as collie manifesting an unfair labour practice, the Management is mainly responsible for deliberate violation of the LIC rules with intent to negate the legitimate claims of the workmen for their regularization- Sec.48(1) of the LIC Act 1956 empowers the Corporation to make regulations in the matters as enlisted under its Sec.49(2) but not inconsistent with the Act. The corporation by virtue of its said authority made the regulations as notified by the Government on 23.07.1960 related to the terms and conditions of services of its staff known as LIC of India (Staff) of the Corporation. The regulation provides only for two types of employment such as regular staff and temporary staff, but not for Employment as Badli/Part time/ daily wage etc., as prevalent in the corporation always against perennial and permanent vacancies for decades. Many such employees according to cadre class III & IV prior to May, 1985 employed by the Corporation were made absorbed as per the Order of the NIB. I & II over the compromise in the SLP No. 4906/1988. The LIC amendment Act. 1981 only relates to the aspect of payment of Bonus, but the Act stands repealed. So the Industrial Dispute Act. 1947 is quite applicable and prevails upon the LIC of India. The Industrial Tribunal has only to adjudicate the reference in its terms as made by the Government.

5. Whereas specifically denying all the allegation of the Union for its workmen, the pleaded case of the O.P./ Management is that the workmen concerned including Harendra Paswan were engaged as coolies on daily wages as and when required by the Muzaffarpur Branch of LIC. They were paid their wages on daily basis as per the approved rate of Government of Bihar in accordance with the Minimum Wages Act at par with other daily wage workmen for the work of similar nature. They were never appointed by the Competent Authority of the Corporation in accordance with its rules. Whether they completed their working for 240 days or not in a calendar year can not be a ground for their absorption. They have not any right to be so in the service of the corporation against permanent posts, which are filled up as per statutory rules. Regulations and Instruction issued by the Competent Authority of the Corporation in accordance with the provision of Life Insurance Corporation of India Act, 1956 having overriding effect on the provisions of the industrial deutes Act, 1947. As the terms and conditions of service of an employee of the Corporation are governed by the Statutory Rules deemed to be framed by the Central Government are applicable to its employees. The Tribunal has no jurisdiction for an adjudication in such reference related to appointment, termination etc., of an employee of the Corporation, as Sec.49 (1) of the Life Insurance Corporation India Act, 1956

confers power upon the Corporation to make Regulations in all matters for effecting its provisions under its Sub-sec (2)(a) to (m) related to the method of recruitment of employees and agents of the Corporation, and the terms and conditions of the service of the persons on their becoming the employees of their Corporation. The Chairman of the Corporation in exercise of the power under 8 of the Staff Regulation 1960 issued the instructions known as LIC Recruitment class III & IV Staff Instruction 1993 in supersession of the provisions of instructions 1979. As both the Industrial Dispute Act and the Corporation Act have been framed by the Parliament, but the amendments have been introduced in the corporation Act in Section 48 *w.e.f.* 31.1.1981 with a non-obstante clause (an over ridding effect) as evident from the intention of the Parliament in Sub-Sec 2(CC) over the provisions of the Industrial Disputes Act (I.D.Act) so far the provisions relate to the terms and conditions of employment which are in conflict with those of the I.D. Act 1947, it is settled law that Sec. 2(o) "retrenchment" even if its Sub-section (bb) under the I.D Act, 1947 is not attracted, there is no question of section 25 F of the Act on the basis of which the termination of service of the petitioner concerned can not be held invalid. The six workmen were not appointed or engaged as sub-staff (Peon) in accordance with the rules, but were engaged on the basis of need of the work. They are temporary employees working on daily wage, so they are not entitled to regularization or absorption as prayed. It is alleged that no relationship of employer and employee existed between the workmen and the Management. The nature of the job performed by the workmen concerned was not permanent and perennial. There can not be the mode of appointment of the workmen through back door entry in public service in violative of the statutory rules of the O.P./Management. As the present reference is not an industrial dispute, it is without authority of law and wholly devoid of jurisdiction.

FINDING WITH REASONS

6. In the Reference(s), WWI Harendra Paswan, WW2 Shankar Jha for the Union concerned, and MWI Lakshman Lal Das, the A.O.(P.S.), MW2 Tauhid Alam, the Asstt. Admn. Officer for the O.P./Management have been examined respectively.

On perusal of the pleading of the parties, the documents relied on by the workmen, evidences of the witness of both the parties, it appears beyond dispute that these six workmen are purely temporary daily wagers, and they were not permanently appointed by the Management, rather orally appointed in the year 1989 and 1990 (as contrasted with their pleading working since 1983). But the evidence of WW2 Shankar Kr. Jha, one of the six workmen, about their performance as peon and clerical staff at the direction of the Authorities concerned from 1997-98 is beyond their pleadings. So it is inadmissible as baseless. So far as the photo copies of the documents of the workmen

concerned -Extt W.1 series are concerned, out of them, the Extt.W.1/5-6 and 1/2-4 are the interviews letters dt.16.8.89, 12.10.1993, Jan. 2, Feb. 8, 1993 and Dec. 5, 1995 of two workmen Harendra Paswan and Shankar Kumar Jha respectively which are also unacceptable because of their being unpleaded. Ext. W.1., the LIC of India, Muzaffarpur Branch Office letter dt. illegible refers to usual casual temporary engagement of coolies, but no appointments of temporary/Badli workers by the local Management. But the photocopy of the Arrears of Daily Wagers including the six workmen for April, 2011 as Ext. W.1/1 proves the payment of Arrear difference of their daily wages to them for their working days 21 to 23 days. The statement of MWI Laxman Lal Das, the Admn. Officer of the Management Branch just that of MW2 Tauhid Alam, the Asstt. A.O. asserts the casual engagement of the workmen but not against permanent posts, out of the six only two workmen Shankar Kumar Jha and Harendra Paswan as seen have been working as daily wagers for the last three years at Muzaffarpur Branch Office; they are paid their wages for the days they worked excluding Sundays and Holidays, but none of them completed for 240 days in any calendar year, rather they worked for about 100 to 125 days in a year. They are paid through vouchers based on their submitted bills, and no official Register is maintained for the days of the temporary workmen.

Having gone through the written arguments of both the parties, I find that the written argument of the union Representatives concerned appears to be overbased on unsubstantiated facts of the workmen's cases, apart from a lot of citations of Ruling, out of them, the Union Representatives have over relied upon these two judicial Authorities:

AIR 1990 SC 371, Bhagwati Prasad Ors Vs. Delhi State Mineral Dev. Corporation, when it has been held that the continuous working for 3 years even with intentional break is sufficient to make the services permanent even if the workmen are less educationally qualified to the working post on which they are working, and

AIR 2006(4) SC 1, Secretary, State of Karnataka & Ors Vs. Uma Devi (2) & Ors. wherein held to make the services of such workmen permanent within six months' period, directing the Central & State Governments and its instrumental to implement it with the stipulated time (Para 53).

In view of the nature of the cases as represented by the Union Representative vicariously for regularization of the six workmen, none of the aforesaid rulings holds good with the present factum of the References cases under adjudication, as all the very fact of the continuous working of any of the workmen concerned for 240 days during a period of twelve calendar months preceding the date with the Reference to which calculation to be made as stipulated under Sec.25 (b)(2)(a) of the Industrial Dispute Act, 1947, has not been substantiated before the Tribunal. The burden of proof lies on the workman to establish that he has worked

for 240 days in the preceding 12 months as held by the Hon'ble Apex Court in the case of *Essen Deinki Vs. Rajiv Kumar* (2002) & SCC 400: AIR 2003 SC 38.

In result, the references are in their terms are hereby responded.

ORDERED

That the Award be and the same is passed that the action of the Management of L.I.C. of India, Muzaffarpur, in refusing to accept the claim of the Union in regularizing the services of S/Shri Harendra Paswan, Raghubansh Kumar, Gopal Kumar, Shankar Kumar Jha, B.K. Tewari and Naveen Kumar working in the Establishment since 1983 continuously are legal and justified, as they worked on need based temporarily purely on daily wages. Hence none of the six workmen is entitled to any relief.

KISHORI RAM, Presiding Officer

नई दिल्ली, 10 फरवरी, 2014

कांआ 684.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी सी सी एल के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं० 2, धनबाद के पंचाट (संदर्भ संख्या 55 of 2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10/02/2014 को प्राप्त हुआ था।

[सं० एल-20012/13/2012-आईआर (सीएम-1)]

एम० के० सिंह, अनुभाग अधिकारी

New Delhi, the 10th February, 2014

S.O. 684.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 55/2012) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure, in the industrial dispute between the management of M/s. BCCL, and their workmen, received by the Central Government on 10/02/2014.

[No. L-20012/13/2012-IR(CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO.2) AT DHANBAD

PRESENT:

Shri Kishori Ram, Presiding Officer.

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act., 1947.

Reference No. 55 of 2012

PARTIES : The Central General Secretary,
Colliery Karmchari Sangh, Hattalla, Patherdih,
Dhanbad

Vs.

General Manager E.J. Area of M/s BCCL,
Bhowra, Dhanbad

APPEARANCES:

On behalf of the workman/Union : None

On behalf of the Management : Mr. D.K. Verma, Ld. Advocate

State : Jharkhand

Industry : Coal

Dated : Dhanbad, the 26th Dec., 2013

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on then under Sec. 10(1)(d) of the I.D. Act., 1947 has referred the following dispute of this Tribunal for adjudication *vide* their Order No. L-20012/13/2012 IR(CM-I) dt. 21.08.2012.

SCHEDULE

"Whether the action of the management of COCP, Sudamdih of M/s BCCL in not regularizing Smt. Motishwari Devi as Security Guard though she fulfils all the criteria for regularization as Security Guard, is fair and justified? To what relief is the work woman concerned entitled?"

2. Neither union Representative for Colliery Karmchari Sangh, Hat Talla, Patherdih, Dhanbad nor workwoman Smt. Motishwari Devi appeared nor written statement filed on her behalf. Mr. D.K., Verma, the Ld. Advocate for O.P./ Management is present.

On perusal of the case record, I find the case has been ab initio pending for filing a written statement along with the documents since 26.12.2012, for which three Regd. notices dt. 13.10.2012, 05.04.2013 and 30.08.13 issued to the Central General Secretary of the Union on his addresses noted in the reference itself, yet it went unresponded on behalf of the Union as well as the workwoman. Not only the Union but also workwoman by conducts appears to be disinterested in pursuing the case for a finality in the Reference which is related an issue of regularization of the workman as Security Guard. Under these circumstances the case is closed as no Industrial Dispute existent; accordingly an award of 'No dispute' is passed.

KISHORI RAM, Presiding Officer

नई दिल्ली, 10 फरवरी, 2014

कांआ 685.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी सी सी एल के

प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं० 2, धनबाद के पंचाट (संदर्भ संख्या 22/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10/02/2014 को प्राप्त हुआ था।

[सं० एल-20012/24/2006-आईआर (सीएम-I)]

एम० के० सिंह, अनुभाग अधिकारी

New Delhi, the 10th February, 2014

S.O. 685.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 22/2006) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure, in the industrial dispute between the management of M/s. BCCL, and their workmen, received by the Central Government on 10/02/2014.

[No. L-20012/24/2006-IR(CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT:

Shri Kishori Ram, Presiding Officer.

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947.

REFERENCE NO. 22 OF 2006

PARTIES : Daya Shankar Rajbhar,
Ex. M/Loader, Dharmabandh Colliery,
Malkera, Dhanbad
Vs.
Chief General Manager, Barora Area-I
of M/s. BCCL, Nawagarh, Dhanbad

APPEARANCES:

On behalf of the : Mr. U. P. Sinha, Ld. Advocate
workman/Union
On behalf of the : None
Management
State : Jharkhand
Industry : Coal

Dated, Dhanbad, the 19th Dec., 2013.

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec. 10(1)(d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication *vide* their Order No. L-20012/24/06-IR(CM-I) dt. 01.06.2006.

SCHEDULE

"Whether the action of the management of BCCL, Barora Area-I to dismiss Shri Daya Shankar Rajbhar from service w.e.f. 15.2.03 is just, fair and legal? If not, to what relief is the workman entitled?."

2. The case of the workman Daya Shankar Rajbhar firstly seeking the need for correction of his dismissal date 15.3.03 as 21/22.05.2004 is that he was appointed under death in harness Scheme of NCWA VI from August, 2000, getting personnel No. 03019080. He was a permanent employee as M/Loader in 2/15 Incline of Madhuban Colliery under Borora Area-I of the BCCL. Due to very hard and arduous job of Miner/Loader, he fell ill which was informed by his application dt. 15.3.2003, received in the office on the same day, with a request to the Project Officer to grant his sick leave, and to produce the Medical Certificate while resuming his duty. The workman got himself treated for Jaundice under Dr. Suresh Pd. Sinha, the Civil Asst. Surgeon of Government of Jharkhand, Dumra, Baghmara Road, where his family members residing had taken care of him. When he reported for his duty on 14.06.2003 with his Medical certificate of the Doctor to the colliery Authority, he was not allowed to resume his duty, rather was served with charge sheet dt. 14/20.6.2003 as evident from the Management letter dt. 8/9.4.2004 on 20.6.2003 directing him to give his explanation within 48 hours. He submitted his reply to it on 20.6.2003. As per the Management's letter dt. 8/9.4.2004, the workman was informed that an enquiry was conducted and the charge brought against him found to be proved, he might reply within seven days as to why not hard disciplinary action be taken against him, but he was not served with the copy of enquiry report along with the letter. The workman also reported to the above letter No. 510/04 dt. 8/9.4.2004 containing altogether different allegations unmentioned in the Original Chargesheet No. 1481 dt. 14/20.6.2003. Neither an enquiry was conducted nor he was given personal hearing. He was highly prejudiced for non-supply of the enquiry report. Thereafter, he was dismissed from the service with immediate effect as per the management's Letter No. 861/2004 dt. 21/22.05.2005 which was issued for his absence for less than three months from 15.03.2003 to 13.06.2003 on account of his sickness and treatment for jaundice by the said Government Doctor. the dismissal order is shocking and disproportionate, as the workman was already kept idle without work, wages and compensation from 4.6.2003 to 21/22.04.2004 date of his dismissal. The action of the management in dismissing him is unjust, unfair and illegal. The workman is entitled to re-instatement with full back wages and consequential relief.

3. In the instant case, Mr. B.M. Pd. the Learned Advocate for the O.P./Management appeared on 08.09.11, though several Regd. Notices including Show Cause were issued to the O.P./Management, but non-filing of any written statement-cum-rejoinder on behalf of the O.P./

Management resulted in ex-parte hearing as per the Order No. 19 dt. 07.06.2012 of the Tribunal.

FINDING WITH REASON

4. In the instant reference, WW1 Daya Shankar Rajbhar, the workman himself was ex-parte examined. The affidavit statement of the workman reveals that on falling sick, he had sent its information to the Management on 15.3.2003; he had also submitted his Medical Certificate and treatment. (photocopies—Ext. W.2 series), but instead of letting him join his duty, he was issued a chargesheet dt. 14.6.2003 for absentism from 15.3.2003 to 3.06.2003 with direction to submit his explanation with 48 hours. It also points out that despite his absence due to genuine illness, he was illegally dismissed as per the dismissal letter dt. 21/22.5.2004 (Ext. W.3), and on his appeal (under receipt by the Management on 27.12.2004 but the dateless Appeal of the workman in English-Ext. W.4), it was considered. It is indisputable that the workman was a M/Loader at 2/15 Nos. Mine of Mahduban Colliery under Barora Area No. 1 of M/s. BCCL. but he was dismissed from the service from of the Company without any second show cause which is quite illegal as argued by Mr. U.P. Sinha, Learned Advocate for the workman.

Besides, the infliction of dismissal punishment to the workman for his absentism for only three months six days due to his illness of and suffering from jaundice appears to be not only shocking but also quite disproportionate to the nature of his absentism misconduct for the relevant period 15.03.2003 to 14.06.2003. It is unfair and illegal; it is liable to be set aside in the eye of the Labour Law. The workman deserves the relief under Sec. 11A of the Industrial Dispute Act, 1947.

In result, it is, in the terms of the reference, hereby exparte:

ORDERED

That the Award is and the same is passed that the action of the Management of BCCL. Barora Area I to dismiss the workman Daya Shankar Rajbhar from the service not w.e.f. 15.2.2003 but with immediate effect from 21/22.5.2004 is quite unjust, unfair and illegal. Hence he is entitled to his reinstatement but without back wages in his service within one month from the receipt of the Notification of it following its publication in the Gazette of India by the Ministry of Labour & Employment, Government of India.

The O.P./Management concerned is directed to implement it as instructed.

KISHORI RAM, Presiding Officer

नई दिल्ली, 10 फरवरी, 2014

कांआ 686.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सी.सी.एल. के

प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं० 2, धनबाद के पंचाट (संदर्भ संख्या 171/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10.02.2014 को प्राप्त हुआ था।

[सं० एल-20012/301/2000-आई आर (सीएम-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 10th February, 2014

S.O. 686.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 171/2000) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure, in the industrial dispute between the management of M/s. CCL, and their workmen, received by the Central Government on 10.02.2014.

[No. L-20012/301/2000-IR(CM-I)]

M.K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (No. 2) AT DHANBAD

PRESENT:

SHRI KISHORI RAM, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947.

REFERENCE No. 171 OF 2000

PARTIES : Zonal Secretary,

N.O.C.E.O., K.S.P. (PH-II), Bokaro Thermal, Bokaro Vs. Project Officer, Karo Special Project of M/s. CCL, Bokaro Thermal, Distt. Bokaro

APPEARANCES:

On behalf of the : Mr. D. Mukherjee, Ld. Advocate
workman/Union

On behalf of the : Mr. DK. Verma, Ld. Advocate
Management

State : Jharkhand

Industry : Coal

Dated, Dhanbad, the 26th Dec. 2013.

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on then under Sec. 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to his Tribunal for adjudication *vide* their Order No. L-20012/301/2000(C-I) dt. 27.11.2000.

SCHEDULE

"Whether the action of the management of Karo Special Project of M/s. C.C.L., P.O. Bokaro Thermal, Distt. Bokaro, in not regularizing Shri Koleshwar Kumar and five others (as per list) is justified? If not, to what relief are the workmen concerned entitled and from what date?"

2. The case of the workman Koleshwar Kumar and five others listed as represented by the Zonal Secretary, N.O.C.E.O., Bokaro is that the workmen have been performing the repair of tubs and other work related of permanent nature since putting in more than 240 days attendance in each calendar year under the direct control and supervision of the Management. They have been engaged by the Management to perform the job of permanent and continuous nature, but it has been projected one of them Md. Alam as a contractor, though performing the same job in order to camouflage the real issue with paper arrangement. The disbursement of their wages below the rate of NCWA is but a legal camouflage. They are rendering the services, and producing goods for the benefit of the Management. Though for all the purposes, they are the workmen of the Management, but the payment of their wages below the rate of NCWA to them by the Management through intermediaries is only to deprive the poor workmen besides victimizing them for the Trade Union affiliation. Despite several representations by the workmen and the Union to the Management for their regularization, wages and other benefits as per NCWAs, but of no effect, the Industrial dispute raised by the Union before the A.L.C.(C), Hazaribagh, also failed in conciliation due to adamant attitude of the management resulted in the reference for an adjudication. The action of the management not to regularize the workmen is illegal, unjustified, being vindictive and anti-labour.

3. No rejoinder to the written statement-cum-rejoinder of the O.P./Management has been filed on behalf of the Union concerned.

4. Whereas, categorically denying the allegations of the Union, the pleaded case of the O.P./Management is that the present reference is quite unmaintainable on the ground that no employer-employee relationship exists between the alleged workmen and the Management. They never represented either before the management for regularization as employees of the Management or as those of the contractor, rather they raised it to have worked as workmen of contractor Mr. Alam who was awarded the contract for repair of tubs from time to time on the basis of the work orders issued to him after accepting the rates of repairing quoted by himself. The sponsoring has made the false claim for their regularization through litigation. The

Management has permanent workmen in its own workshop for carrying on all smithy job required on regular basis. No contract is awarded to any party for carrying on smithy job of permanent nature and regular nature. Sometimes the set of tubs coupled with in train get damaged on account of the derailment due to the negligence of the haulage engine driver or trammers need repair intermittently. A contractor is engaged for repair the damaged tubs brought on the surface store as per the scheduled rates duly accepted by the Management on the basis of quotation submitted by the Contractor, the damaged portions of the steel plates are cut and removed New M.S. Plates are issued by the Store for substitution of the damaged pieces. The contractor undertakes the job on the contract rate, accordingly carries on the repair of the tubs with all the materials supplied by the Management for it. The contractor engages his own workmen, and pay them their wages as per the rate agreed. The contractor exercises full control over his workmen, who are under his supervision, control, direction for his all affairs. The nature of repairing job is intermittently, so such contract can not be described as a camouflage. No one can demand for regulation of the contract workers by the Management of the Public Sector Undertaking, which is bound to follow the constitutional provision in the matter of recruitment of workmen and their regularization. But the contractor-workers engaged casually whenever required can not be permanently absorbed in violation of the constitutional provision. The contractor workers were never selected or recruited nor paid nor controlled or supervised by the Management. So the demand of the Union being devoid of merits is liable to be summarily rejected.

5. The O.P./Management in its rejoinder has specifically denied all the allegations of the Union concerned as baseless, vague and false and stated that the workers concerned are not at all entitled to any relief.

FINDING WITH REASONS

6. In the instant case, WW1 Md. Kalam, one of the workmen for sake of all including himself, and WW2 Bhagirath Sharma on behalf of the Union concerned, and MW1 Shabbu Nath Tiwary for the O.P./Management have been examined.

Mr. D. Mukherjee the Learned Counsel for the Union submits that the Management's witness (MW1) did not corroborate the management's plea that the management has permanent black smith, there is no need of engaging contractor workmen for repair of tubs. He has quoted the pleadings are no substitute for proof as held in the case of Manager, R.B.I., Bangalore Vs. N. Momi 2005(105) F.L.R. 1067(SC) whereas Shambhu Nath Tiwari (MW1) as his pleaded statement stands has established that the repair

of coal tubs, which is not of permanent nature, is temporarily done by a contractor, so the statement of the workmen about their engagement and taking from them the repairing work of coal tubs is myth. But the Management has no such alleged pleading "no need of engaging contractor workers for repairs of coal tubs." The argument of M. Mukherjee is wide off the mark.

Further Mr. Mukherjee Learned Counsel for the union emphatically submits that the Management has miserably failed to produce any document as a proof that Md. Alam had been ever engaged as contractor for tub repairing job, as also failed to prove the payment to the workmen by the contractor after payment made by the Management to the contractor. But the plea of Mr. Mukherjee is unacceptable in face of the fair admission of the Zonal Secretary in his writing as admitted by the workmen Md. Jawahair, Raja Ram Sah, Md. Kamal and Md. Naeem Ansari about the status of the said contractor who used to pay them their wages for the repair of tubs in the conciliation proceeding before the A.L.C. The Zonal Secretary of the Union once admitted the status of Md. Alam as their contractor before the ALC can not be allowed to detract from it in the reference in which Md. Alam is not named as a workman. The statement of Shambhu Nath Tiwary (MWI) Para 3 clearly points out the payment is made by the Management to the contractor, but not directly to the workmen, for repair of coal tubs.

7. Further submission of Mr. D. Mukherjee, the Learned Counsel for the Union is that the workmen have proved their engagement by the Management as Tub repair and manufacturing job as their documents Ext. 1 to 4, but the statutory documents, Attendance Register and the Payment Vouchers as called for, have not been filed by the Management, and that though they had been working since 1989, they were dropped from working since 2000 as stated by WW1 Kalam, one of the workmen. In support of the workmen's case, Mr. Mukherjee has relied upon the rulings as under:

2002LLR 448(SC), Indian Fertilizer Corporation Co. Ltd. Vs. Industrial Tribunal, wherein held that the conclusion of the Tribunal that they are employees of the Appellant based on evidence is correct;

S.C.L.J.(6) Page 3867 Basti Sugar Mills Vs. Ram Ujagar, as held by the Hon'ble Apex Court therein where at the challenge of the workmen to their termination of service, the management pleaded them as the employees of contractor, the Tribunal awarded them employee of the Management, directing them for reinstatement with full back wages which was confirmed;

L.L.J. (2) 1964 PAGE 6333 Md. D.C. Diwan Mohuddin Saheb Vs. United Biri Workers Union, wherein at the point

of the Management's plea about the workmen as the employee of contractor, it was held them the employees of the management;

S.C.L.J. (15) page 12, Hassain Bhai Vs. Alath factory wherein held by the Hon'ble Supreme Court that at the true test application of principle of doctrine of lifting he veil where a worker or a group of worker labourer to produce goods or services, and the goods or services are for the business of another, that is in fact, the employer, it was also confirmed by the Hon'ble Apex Court in the case of Steel Authority of India Ltd. Vs. National Union Water Front Workers, 2001 LLR page 961;

LLR 1994 page 634 R.K. Panda Vs. Steel Authority of India where the settled law is that in all such cases labourers are initially employed and engaged by the contractor, as such at what point of time a direct link is established between the contractors and principal employer eliminating the contractor from the scene is a matter which has to be established on materials produced before the Court.

It is also submitted by Mr. Mukherjee that even after discussing the Uma Devi's case (2006)(3) SCC (L&S) 753, the Hon'ble Apex Court has upheld the finding of the Tribunal about the workmen as the employee of ONGC and not contractor employees, the workmen would be entitled to all benefits available in that capacity as held in the case of G.M., O.N.G.C. Shilcher Vs. N.G. contractual workers Association, 2008 AIR SCW 3996, just as upheld by the Hon'ble Supreme Court in the case of Biilwars Dugdgh Utpadak Sahakari St. Ltd. Vs. Vinod Kumar Sharma Qrs, 2011 LLR 1079 that the contractor's employees were factually the employees of the appellant/employer who were working under the order of the Officers of the employer. Besides Mr. Mukherjee referred to the confirmation of an Award dt. 18.8.1997 passed by the C.G.I.T. No. I, Dhanbad in *Ref. Case Nos. 156/94 and 72/95* up to the Hon'ble Apex Court by its judgment dt. 17.4.2000 in S.L.P. (Civil) No. 15253/1999 in respect of regularization of contractor workmen with wages.

8. In response to it, Mr. D.K. Verma, the Learned Counsel for the O.P./Management has contended that as per the pleading of the workmen in its Para 4 and 7 that their engagement through Intermediary and they worked for more than 240 days in each calendar year, none of the workmen's witnesses (WW1 and 2) has proved their pleading, rather they have produced their a few gate passes, so pleading is no substitute for proof. Moreover Md. Alam, contractor, was awarded a contract for repair of Coal Tubs, which was not of permanent nature, so none of the workmen is entitled to regularization.

9. On perusal and consideration of the materials oral and documentary of the workmen as well as the oral statement of Management witness, I find the facts as under:

- (i) The stand of the Union/workmen as their Learned Counsel is sometimes as the direct employees of the O.P./Management or at times as the contractor workers, but their factual stand is that they were the workers of contractor Md. Alam as evident from the list of the workmen dt. 17.1.2000 (Ext. W.2) issued by the C.I.S.F. bearing the name of the contractor for one day only. Out of the four Gate Passes (Ext. W.1 series), three photocopies thereof are dt. 5.5.95 unsigned by an official, dt. 4.6.99 and 10.5.99 issued by the office to Naeem Ansari, Md. Kamal (workmen Sl. Nos. 4 & 3 respectively), whereas the last fourth Gate Pass dt. 1.12.98 allegedly issued to workman No. 1, Kaleshwar Kumar is in original which appears to be fake, being unsigned by the Office concerned. The two carbon copies of the Store Slips dt. 21.4.99 and 8.3.2000 (Ext. W.3 series) issued by the Engineer Sambhu Nath Tiwary were issued to aforesaid workman Md. Kamal. The photocopy of alleged Joint Leave Application dt. 13.3.2000 to Sr. E.E., K.S.P. Phase II (Ext. W.4) is for leave for 14th & 22nd March, 2000. It does not prove if the alleged application was granted by the Sr. E.E. But none of the alleged documents is an order of any Authority of the O.P./Management for the workmen to work as repairer of Coal Tubs so as to be held them as the employees of the Management as required as held in the case Bhilwara Dugdh Utpadak Sahakari S. Ltd. Vs. Vinod Kr. Sharma & Ors., 2011 LLR 1079 as cited by Mr. Mukherjee, Learned Advocate for the workmen'.
- (ii) The oral evidence of WWI Md. Kalam about their working from 1989, and stopping from working since 2000, being vague and unpleaded is inadmissible. Accordingly, the workmen have no proof of their continuous working for minimum 240 days under the alleged principal employer in a year preceding the date of the Reference as required under Sec. 25B of the Industrial Dispute Act, 1947, and
- (iii) The Reference case has neither pleading nor proof the point of time when a direct link between the contract labourers and their principal employer established, eliminating the contractor from the scene as the verdict of the Hon'ble Apex Court in aforesaid R.K. Panda's Case, LLR 1994 at page 634.

In view of the findings, I do not find any of the rulings cited by Mr. Mukherjee, Learned Counsel for the Union

applicable to the present case, as every ruling has its own ratio decidendi, and accordingly his argument appears to be not conducive to the success of the case; hence his argument is unpersuasive.

In result, it is, in the terms of the reference hereby:

ORDERED

That the Award is and the same be passed that the action of the Management of Karo Special Project of M/s. CCL, P.O. Bokaro Thermal, Dist. Bokaro is not regularizing Sri Koleshwar Kumar and five others (as per the list) is quite legally justified. Hence, the workmen are not entitled to any relief.

KISHORI RAM, Presiding Officer

List of the workmen

Name	Father Name	Name of the Contractor
1. Koleshwar Kumar	Dukhi Kumar	M/s M. Alam
2. Salim Ansari	Razag Ansari	M/s M. Alam
3. Md. Kalam	I. Ansari	M/s M. Alam
4. Naeem Ansari	Qualim Ansari	M/s M. Alam
5. Jawahar Ansari	Thahir Ansari	M/s M. Alam
6. Rajaram Sah	Sonalal Sah	M/s M. Alam

नई दिल्ली, 10 फरवरी, 2014

का०आ० 687.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बीसीसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं० 1 धनबाद के पंचाट (संदर्भ संख्या 21/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10/02/2014 को प्राप्त हुआ था।

[सं. एल-20012/37/2008-आई आर(सीएम-1)]

एम० के० सिंह, अनुभाग अधिकारी

New Delhi, the 10th February, 2014

S.O. 687.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 21/2008) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, No. 1, Dhanbad as shown in the Annexure, in the industrial dispute between the management of M/s. BCCL, and their workmen, received by the Central Government on 10/02/2014.

[No. L-20012/37/2008-IR(CM-I)]

M.K. SINGH, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL (No. 1),****DHANBAD**

IN THE MATTER OF A REFERENCE U/S 10 (1) (D) (2A)
OF I.D. ACT, 1947

Ref. No. 21 of 2008

Employers in relation to the management of Burragarh
Colliery, Kustore Area, M/s. BCCL

AND

Their Workmen

PRESENT : Sri Ranjan Kumar Saran, Presiding Officer

APPEARANCES:

For the Employers : Sri D.K. Verma, Advocate

For the Workman. : Sri K.N. Singh, Rep.

State:— Jharkhand

Industry : Coal

Dated 10.01.2014

AWARD

By Order No. L-20012/37/2008-IR(CM-I), dated 28.4.2008, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

"Whether the action of the management of Burragarh Colliery of M/s. BCCL in dismissing Sri Suraj Hari M/ Loader from the services of the company w.e.f. 08.04.2006 is Legal & justified" If not, to what relief is the concerned workman entitled?"

2. The case is received from the Ministry of Labour on 05.06.2008. After receipt of reference, both parties are noticed, the workman files their written statement on 08.03.2010. And the management files their written statement cum-rejoinder on 02.09.2011. The short point involved in the reference is that the workman has been dismissed from his services on the ground of absenteeism.

3. During preliminary hearing it is revealed that this case is dismissal of workman for long absence on duty. It is found that, the workman is young. It is also found that, He has already out of service for 7 years. It is felt to give another chance to the workman to serve.

4. Considering the facts and circumstances of this case, I hold that he be taken into job as a fresh employee. Therefore the question of back wages does not arise at all, Communicated.

This is my award

R.K. SARAN, Presiding Officer

नई दिल्ली, 10 फरवरी, 2014

कांआ० 688.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीसीसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं० 1 धनबाद के पंचाट (संदर्भ संख्या 63/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10/02/2014 को प्राप्त हुआ था।

[सं० एल-20012/81/2009-आई आर(सीएम-1)]

एम०के० सिंह, अनुभाग अधिकारी

New Delhi, the 10th February, 2014

S.O. 688.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 63/2009) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure, in the Industrial Dispute between the management of M/s. BCCL, and their workmen, received by the Central Government on 10/02/2014.

[No. L-20012/81/2009-IR(CM-I)]

M.K. SINGH, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL (NO. 1),****DHANBAD**

IN THE MATTER OF A REFERENCE U/S 10 (1) (D) (2A)
OF I.D. ACT, 1947

Ref. No. 63 of 2009

Employers in relation to the management Kustore Area,
M/s. BCCL

AND

Their Workmen,

Present : Sri Ranjan Kumar Saran, Presiding Officer

Appearances:

For the Employers : Sri D.K. Verma, Advocate

For the Workman : Sri N.M. Kumar, Rep.

State : Jharkhand

Industry : Coal

Dated 13.11.2013

AWARD

By Order No. L-20012/81/2009-IR(CM-I), dated 30.11.2009, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of

the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

- (i) Whether the action of the management of Simlabahal Colliery under Kustore Area of M/s BCCL in dismissing Sri Shekh Kramtulla from the service of the company w.e.f. 14.05.2008 is justified and legal" (ii) To what relief is the workman concerned entitled."

2. The case is received from the Ministry of Labour on 16.12.2009. After receipt of reference, both parties are noticed, the workman files their written statement on 23.02.2010. And the management files their written statement- cum-rejoinder on 08.10.2010. The point involved in the reference is that the workman has been dismissed from his services.

3. During preliminary hearing it is revealed that the case is dismissal of workman for long absence on duty. He has already out of service for 5 years. It is felt to give another chance to the workman to serve.

4. Considering the facts and circumstances of this case, I hold that he be taken into job as a fresh employee. Therefore the question of back wages does not arise at all.

This is my award

R.K. SARAN, Presiding Officer

नई दिल्ली, 10 फरवरी, 2014

का०आ० 689.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) का धारा 17 के अनुसरण में, केन्द्रीय सरकार बीसीसीएल के प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं० 1 धनबाद के पंचाट (संदर्भ संख्या 43/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10.02.2014 प्राप्त हुआ था।

[सं. एल-20012/75/2007-आई आर(सीएम-1)]

एम०के० सिंह अनुभाग अधिकारी

New Delhi, the 10th February, 2014

S.O. 689.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 43/2007) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, No. 1. Dhanbad as shown in the Annexure, in the industrial dispute between the management of M/s BCCL, and their workmen, received by the Central Government on 10/02/2014.

[No. L-20012/75/2007-IR(CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (No. 1), DHANBAD

IN THE MATTER OF A REFERENCE U/S 10 (1) (D)(2A)
OF I.D. ACT, 1947

Ref. No. 43 of 2007

Employers in relation to the management of Govindpur
Colliery of M/s BCCL

AND

Their Workmen,

Present: SRI RANJAN KUMAR SARAN, Presiding
Officer

Appearances:

For the Employers	:	None
For the Workman.	:	Sri B.B. Pandey, Advocate
State	:	Jharkhand
Industry	:	Coal

Dated 15.11.2013

AWARD

By Order No. L-20012/75/2007-IR-(CM-I), dated 09.08.2007, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

"Whether the action of the management of Govindpur Colliery of M/s BCCL in dismissing the service of Shri Mahendra Rajwar, Miner/Loader w.e.f. 26.02.2005 is justified and legal? If not to what relief is the concerned workman entitled?"

2. The case is received from the Ministry of Labour on 24.08.2007. After receipt of reference, both parties are noticed, they appear and file their claim statement. The point involved in the reference is that the workman has been dismissed from his services.

3. During preliminary hearing it is revealed that the case is dismissal of workman for long absence on duty. He has already out of service for 8 years. It is felt to give another chance to the workman to serve.

4. Considering the facts and circumstances of this case, I hold that he be taken into job as a fresh employee. Therefore the question of back wages does not arise at all.

This is my award

R.K. SARAN, Presiding Officer

नई दिल्ली, 10 फरवरी, 2014

का०आ० 690.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ईसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं० 1, धनबाद के पंचाट (संदर्भ संख्या 71/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10/02/2014 प्राप्त हुआ था।

[सं एल-20012/167/2002-आई आर(सीएम-I)]

एम०के० सिंह, अनुभाग अधिकारी

New Delhi, the 10th February, 2014

S.O. 690.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 71/2003) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, No. 1, Dhanbad as shown in the Annexure, in the Industrial Dispute between the management of M/s ECL, and their workmen, received by the Central Government on 10/02/2014.

[No. L-20012/167/2002-IR(CM-I)]

M.K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (No. 1), DHANBAD

Ref. No. 71 of 2003

In the matter of a Reference U/s 10 (1) (D) (2A) of I.D. Act, 1947

Parties: Employer in relation to the management of
Mugma Area of M/s. E.C. Ltd.

AND

Their Workmen,

PRESENT : Sri R. K. Saran, Presiding Officer

APPEARANCES:

For the Employers : Sri D.K. Verma, Advocate
For the Workman. : None
State : Jharkhand
Industry : Coal

Dated 09.01.2014

AWARD

By order No. L-20012/167/2002-IR-(C-I), dated 27.6.2003, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal:

SCHEDULE

"Whether the demand of Bihar Colliery Kamgar Union of Mugma Area of M/s Eastern Coalfield Ltd. for regularization of Ram Raj Tatwa and 54 others workmen as per annexure is legal and justified? If so, what relief the concerned workman are entitled and from which date?"

R.K. SARAN, Presiding Officer

ANNEUXRE

LIST OF WORKMAN

- | | |
|--------------------------|-------------------------|
| 1. Ram Raj Tatwa | 2. Jiban Karmakar |
| 3. Aswani Kumbhakar | 4. Matal Ch. Bhandari |
| 5. Umapada Bhandari | 6. Dhiren Gorai |
| 7. Fatik Modak | 8. Subal Pandit |
| 9. Manik Bhandari | 10. Samir Santikari |
| 11. Bhabataran Tewari | 12. Somnath Sinha |
| 13. Suresh Prasad | 14. Himadri Mukherjee |
| 15. Bhupoti Mondal | 16. Nabagopal |
| 17. Sunul Modak | 18. Manik Gorai |
| 19. Subhas Gorai | 20. Sadhan Kumbhakar |
| 21. Shankar Modak | 22. Sri Asit Kr. Tewary |
| 23. Sri Jajkant Upadhyay | 24. Shyama Modak |
| 25. Subhas Gorai | 26. Ananda Karmakar |
| 27. Arun Kumar Sao | 28. Dharu Gorai |
| 29. Susanta Banerjee | 30. Bhabataran Gorai |
| 31. Dilip Gorai | 32. Madan Kumbharar |
| 33. Subash Rajbar | 34. Susanta Pandey |
| 35. Harisadhan Mondal | 36. Nepal Ch. Karmakar |
| 37. Manik Chakraborty | 38. Sri Anil Kr. Gorai |
| 39. Sri Uttam Gorai | 40. Paresh Mahato |
| 41. Dilip Biswakarma | 42. Prasadi Mahato |
| 43. Sri Kheden Roy | 44. Prahlad Karmakar |
| 45. Ranjan Modak | 46. Manik Karmakar |
| 47. Sudhir Das | 48. Prabir Kumar Boxi |
| 49. Montu Gorai | 50. Pawan Kr. Ram |
| 51. Sir Golak Mokak | 52. Sri Joginder Sharma |
| 53. Sri Ram Nath Gope | 54. Sri Haradhan Lohar |
| 55. Jagarnath Gope | |

2. After receipt of the reference, both parties are noticed. But appearing for certain dates, none appears subsequently. Case remain pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence pass a No disputed Award is passed. Communicate to the Ministry.

नई दिल्ली, 10 फरवरी, 2014

SCHEDULE

का०आ० 691.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार टिस्को के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं० 1, धनबाद के पंचाट (संदर्भ संख्या 46/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10/02/2014 को प्राप्त हुआ था।

[सं० एल-20012/1/2004-आईआर (सीएम-1)]

एम०के० सिंह, अनुभाग अधिकारी

New Delhi, the 10th February, 2014

S.O. 691.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 46/2004) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure, in the industrial dispute between the management of M/s. TISCO and their workmen, received by the Central Government on 10.02.2014.

[No. L-20012/1/2004-IR (CM-I)]

M.K. SINGH, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO. 1, DHANBAD****Reference No. 46/2004**

IN THE MATTER OF REFERENCE U/S 10(1)(D)(2A) OF
I.D. ACT, 1947

Parties: Employer in relation to the management of
TISCO

AND

Their Workmen.

PRESENT : SRI R.K. SARAN, Presiding Officer.

APPEARANCES :

For the Employers : Shri D.K. Verma, Advocate.
For the workman : None
State : Jharkhand
Industry : Coal

Dated: 7/1/2014

AWARD

By order No. L-20012/1/2004 IR (C-I), dated 08.06.2004 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

"Whether the claim of colliery Karamchari Sangh that late Abdul Gaffar received injury in course of and out of employment and died due to accident is correct? If so, whether the demand from the management of TISCO for employment of Sri Alim Ahmad dependent son of workman concerned is legal and justified? If so what relief the petitioner is entitled?"

2. After receipt of the reference both parties are noticed. But appearing for certain dates, none appears subsequently. Case remain pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence, No disputed Award is passed. Communicate to the Ministry.

R.K. SARAN, Presiding Officer

नई दिल्ली, 10 फरवरी, 2014

का०आ० 692.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ई सी एल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं० 1, धनबाद के पंचाट (संदर्भ संख्या 191/1999) को प्रकाशित करती है जो केन्द्रीय सरकार को 10.02.2014 को प्राप्त हुआ था।

[सं० एल-20012/299/1999-आईआर (सीएम-1)]

एम०के० सिंह, अनुभाग अधिकारी

New Delhi, the 10th February, 2014

S.O. 692.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 191/1999) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure, in the industrial dispute between the management of M/s. ECL and their workmen, received by the Central Government on 10/02/2014.

[No. L-20012/299/1999-IR (CM-I)]

M.K. SINGH, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO. 1, DHANBAD****Reference No. 191/1999**

IN THE MATTER OF REFERENCE U/S 10(1)(D)(2A) OF
I.D. ACT, 1947.

Parties: Employer in relation to the management of
Mugma Area of M/S. ECL

AND

Their Workmen.

Present : Sri R.K. Saran, Presiding Officer.

APPEARANCES:

For the Employers : None
For the Workman : None.
State : Jharkhand
Industry : Coal

Dated: 6/1/2014

AWARD

By order No. L-20012/299/99 IR (C-I) dated 22.11.1999 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

"Whether the action of the management of Mugma Area of M/s. ECL, in not regularising Shri M.C. Choubey, of Gopinath Colliery as clerk although he has been performing the job of a clerk since 1978 as per order of Management is justified? If not, what relief the workman is entitled to and from what date?"

2. After receipt of the reference both parties are noticed. But appearing for certain dates, none appears subsequently. Case remain pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence, No disputed Award is passed. Communicate to the Ministry.

R.K. SARAN, Presiding Officer

नई दिल्ली, 10 फरवरी, 2014

कांआ 693.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार टी एस एल के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं 1, धनबाद के पंचाट (संदर्भ संख्या 08/2009) को प्रकाशित करती है जो केन्द्रीय सरकार को 10/02/2014 को प्राप्त हुआ था।

[सं एल-20012/23/2009-आईआर (सीएम-1)]

एम॰के॰ सिंह, अनुभाग अधिकारी

New Delhi, the 10th February, 2014

S.O. 693.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 08/2009) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure, in the industrial dispute between the management of M/s. Tata Steel Limited and their workmen, received by the Central Government on 10/02/2014.

[No. L-20012/23/2009-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO. 1, DHANBAD**

IN THE MATTER OF REFERENCE U/S 10(1)(D)(2A) OF
I.D. ACT, 1947.

Ref. No. 8 of 2009

Employer in relation to the management of Sijua Colliery
of M/s. Tata Steel Ltd.

AND

Their Workmen

Present : Sri Rajan Kumar Saran, Presiding Officer.

APPEARANCES:

For the Employers : Sri D.K. Verma, Advocate
For the Workman : Sri R.R. Ram, Advocate
State : Jharkhand
Industry : Coal

Dated: 13/11/2013

AWARD

By order No. L-20012/23/2009 IR (CM-I), dated 13.02.2009 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following disputes for adjudication to this Tribunal:

SCHEDULE

(i) "Whether the action of the management of Sijua Colliery of M/s. Tata Steel Limited in dismissing Shri Birendar, Miner from the services of the company *w.e.f.* 09.06.2008 is legal and justified? (ii) To what relief is the concerned workman entitled?"

2. The case is received from the Ministry of Labour on 25.02.2009. After receipt of reference, both parties are noticed, the workman files their written statement on 25.03.2009. And the management files their written statement-cum-rejoinder on 08.01.2010. The point involved in the reference is that the workman has been dismissed from his services.

3. During preliminary hearing it is revealed that the case is dismissal of workman for long absence on duty. He has already out of service for 5 years. It is felt to give another chance to the workman to serve.

4. Considering the facts and circumstances of this case, I hold that he be taken into job as a fresh employee. Therefore the question of back wages does not arise at all.

This is my award.

R.K. SARAN, Presiding Officer

नई दिल्ली, 10 फरवरी, 2014

SCHEDULE

का०आ० 694.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी सी सी एल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं० 1, धनबाद के पंचाट (संदर्भ संख्या 33/1992) को प्रकाशित करती है जो केन्द्रीय सरकार को 10/02/2014 को प्राप्त हुआ था।

[सं० एल-20012/70/88/डी-4ए-आईआर (सीएम-1)]

एम०के० सिंह, अनुभाग अधिकारी

New Delhi, the 10th February, 2014

S.O. 694.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 33/1992) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure, in the industrial dispute between the management of M/s. BCCL and their workmen, received by the Central Government on 10/02/2014.

[No. L-20012/70/88/D-IV(A)-IR (CM-I)]

M.K. SINGH, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO. 1, DHANBAD****Reference No. 33/1992**

IN THE MATTER OF REFERENCE U/S 10(1)(D)(2A) OF
I.D. ACT, 1947.

Parties: Employer in relation to the management of
Patherdih Colliery M/s BCCL.

AND

Their Workmen.

PRESENT : Sri R.K. Saran, Presiding Officer.**APPEARANCES:**

For the Employers	: None
For the Workman	: None.
State	: Jharkhand
Industry	: Coal

Dated: 16/12/2013

AWARD

By order No. L-20012/70/88/D-IV(A)/IR (Coal-I) dated 21.04.92 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

"Whether the action of the management of Patherdih Colliery of M/s Bharat Coking Coal Ltd. in not Correcting the date of birth of Sri Balram Bharati, Sub-station attendant in the service Records and the service excerpts is justified? If not, to what relief is the workman entitled?"

2. After receipt of the reference both parties are noticed. But appearing for certain dates, none appears subsequently. Case remain pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence, pass a No disputed Award is passed. Communicate to the Ministry.

R.K. SARAN, Presiding Officer

नई दिल्ली, 10 फरवरी, 2014

का०आ० 695.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी सी सी एल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं० 1, धनबाद के पंचाट (संदर्भ संख्या 37/1992) को प्रकाशित करती है जो केन्द्रीय सरकार को 10/02/2014 को प्राप्त हुआ था।

[सं० एल-20012/167/88/डी-3/डी4ए-आईआर (सीएम-1)]

एम०के० सिंह, अनुभाग अधिकारी

New Delhi, the 10th February, 2014

S.O. 695.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 37/1992) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure, in the industrial dispute between the management of M/s. BCCL and their workmen, received by the Central Government on 10/02/2014.

[No. L-20012/167/88/D-3/D-4(A)-IR (CM-I)]

M.K. SINGH, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO. 1, DHANBAD****Reference No. 37/1992**

IN THE MATTER OF REFERENCE U/S 10(1)(D)(2A) OF
I.D. ACT, 1947.

Parties: Employer in relation to the management of
Sudamdih Area M/s BCCL.

AND

Their Workmen.

Present : SRI R.K. SARAN, Presiding Officer

APPEARANCES:

For the Employers : None

For the Workman : None.

State : Jharkhand

Industry : Coal

Dated : 16/12/2013

AWARD

By order No. L-20012/167/88/D-3/D-4(A)/IR (C-I) dated 22.04.92 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal.

SCHEDULE

"Whether the demand of the Rashtriya Colliery Mazdoor Sangh that Shri Md. Rahman and 45 others shown in the list (Annexure) who were delisted casual workers of Sudamdih Colliery be regularized in terms of circular No. D(P)/PS/86/2649-949(H) dated 8/9.5.86 issued by M/s Bharat Coking Coal Ltd., is justified? If so, to what relief are the workmen concerned entitled?"

R.K. SARAN, Presiding Officer

ANNEXURE

Name of Delister Casual workmen of Sudamdih Colliery

- | | |
|----------------------------|-------------------------|
| 1. Md. Rahman | 9. Sri Ram Sohan Pandey |
| 2. Md. Aslam | 10. Sri Deo Ratan Singh |
| 3. Md. Yusuf | 11. Sri Md. Ikram |
| 4. Sri Ramjatan Paswan | 12. Sri Md. Tazuddin |
| 5. Sri Karu Prasad | 13. Sri Rajaram Sharma |
| 6. Sri Jhagru Ram | 14. Sri Ganesh Preasad |
| 7. Sri Sahdeo Prasad Singh | 15. Sri Krishna Pasawan |
| 8. Sri Gosto Bouri | 16. Sri Md. Asgar Ali |

- | | |
|-----------------------------|---------------------------|
| 17. Sri Sidhnath Pandey | 18. Sri Jang Bahadur |
| 19. Sri Sahdeo Mahto | 36. Sri Narayan Mahto |
| 20. Sri Kali Mahto | 37. Sri Bhutnath |
| 21. Sri Jagdish | 38. Sri Ramhari Mistry |
| 22. Sri Sahadeo Prasad | 39. Sri Dulal Rai |
| 23. Sri Lokenoth Yadav | 40. Sri Jawahar Mistry |
| 24. Sri Jiten Bhattacharjee | 41. Sri Sarban Bose |
| 25. Sri Md. Jamal | (Sri Sarban Kr. Bose) |
| 26. Sri Santosh | 42. Sri Baijnath Prasad |
| 27. Sri Sukhdeo Mukherjee | (Sri Baijnath Paswan) |
| 28. Sri Arther Hussain | 43. Sri Rambilas Ram |
| 29. Sri Satish Prasad Singh | (Sri Ram Bilas) |
| 30. Sri Payara Singh | 44. Sri Inderjit Jadav |
| 31. Sri Singhara Singh | (Sri Inderjit) |
| 32. Sri Md. Abbas | 45. Sri Chandradeo Pandit |
| 33. Sri Nizmuddin | (Sri Chandreshwar Pandit) |
| 34. Sri Janardan Verma | 46. Sri Shyambihari Kumar |
| 35. Sri Dinesh Singh | (Sri Shyam Bihari) |

2. After receipt of the reference both parties are noticed. But appearing for certain dates, none appears subsequently. Case remain pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence, pass a No disputed Award is passed. Communicate to the Ministry.